Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 79-267)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
October 1–5, 1979	$0.0335
People's Republic of China yuan:	
October 1–4, 1979	$0.658588
October 5, 1979	.655953
Hong Kong dollar:	
October 1, 1979	$0.201715
October 2, 1979	.201613
October 3, 1979	.202429
October 4, 1979	.202922
October 5, 1979	.202984
Iran rial:	
October 1–5, 1979	$0.0142
Philippines peso:	
October 1–5, 1979	$0.1350
Singapore dollar:	
October 1, 1979	$0.466853
October 2, 1979	.467290
October 3–4, 1979	.467071
October 5, 1979	.466636

Thailand baht (tical):
October 1–5, 1979 ..... $0. 0495

Venezuela bolivar:
October 1–5, 1979 ..... $0. 2328

(LIQ–3–CT:D:E)

Date: October 16, 1979.

DANIEL D. SULLIVAN
(For G. Scott Shreve, Acting
Director, Duty Assessment Division).

U.S. Customs Service

General Notices

Removal of Prohibition on the Importation of Tuna and Tuna Products From Peru

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice is to advise that under the Fishery Conservation and Management Act of 1976 (the act), the Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has notified the Secretary of the Treasury that the reasons for the imposition of a prohibition on the importation of tuna and tuna products from Peru no longer prevail.

EFFECTIVE DATE: The prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Peru is removed effective Oct. 17, 1979.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry, Examination, and Liquidation Branch, Office of Commercial Operations, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-8651.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 205(a)(4)(C) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.), provides that the Secretary of State shall certify to the Secretary of the Treasury any determination that a fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, has been seized by a foreign nation as a consequence of a claim of jurisdiction not recognized by the United States. The responsibility for this certification was delegated to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affiairs by Department of State Delegation of Authority No. 138 of April 29, 1977.

Pursuant to section 205(b) of the act, upon receiving the certification, the Secretary of the Treasury is required to take such action as

may be necessary and appropriate to prohibit the importation of all fish and fish products from the fishery involved.

Section 205(c) of the act provides that if the Secretary of State finds that the reasons for the import prohibition under section 205 no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove the import prohibition.

On May 1, 1979, a notice was published in the Federal Register (44 F.R. 25554) advising that under section 205(a)(4)(C) of the act, on April 2, 1979, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs certified to the Secretary of the Treasury that a U.S. fishing vessel, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, was seized by Peru as a consequence of a claim of jurisdiction which is not recognized by the United States. Under the authority of sections 205 (b) and (c) of the act, on April 20, 1979, the Secretary of the Treasury determined that the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Peru was prohibited until the Department of State notified the Secretary of the Treasury that the reasons for this prohibition no longer prevailed.

On September 11, 1979, the Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs informed the Secretary of the Treasury that the reasons for the imposition of the import prohibition on tuna and tuna products no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Peru is removed.

DRAFTING INFORMATION

The principal author of this document was Laurie Strassberg Amster, Regulations and Research Division, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Treasury Department participated in its development.

Dated: October 9, 1979.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register Nov. 17, 1979 (44 FR 59985)]

Tariff Classification of Imported Cab Chassis

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice—request for public comments.

SUMMARY: This is to advise that the Customs Service is reconsidering its practice of classifying imported cab chassis under the

provision for bodies (including cabs) and chassis, in item 692.20, Tariff Schedules of the United States (TSUS), in view of the decision of the U.S. Court of Customs and Patent Appeals in *Daisy-Heddon, Div. Victor Comptometer Corp.* v. *United States*, C.A.D. 1228 (1979). As part of this review, Customs requests comments concerning the application of *Daisy-Heddon* to the tariff classification of cab chassis.

DATE: Dec. 17, 1979.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–2938.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a notice published is the Federal Register on September 2, 1975 (40 F.R. 40190), and modified on October 10, 1975 (40 F.R. 47806), Customs announced that it was reviewing its practice concerning the tariff classification of cab chassis (consisting of frames, suspension systems, wheels, engines, steering mechanisms, and cabs) without bodies, having no cargo-carrying capacity in their condition as imported. This action was taken after the contention was advanced that cab chassis should be classified under the provision for automobile trucks valued at $1,000 or more, in item 692.02, TSUS (19 U.S.C. 1202), dutiable at the rate of 25 percent ad valorem under 945.69, TSUS, following general headnote 10(h), TSUS, rather than in accordance with the established and uniform practice.

After a review of the comments submitted in response to the notice, Customs concluded that the existing practice of classifying cab chassis was correct and should not be changed.

Following Customs decision in this matter, the General Accounting Office (GAO), at the request of the Committee on Ways and Means, U.S. House of Representatives, examined Customs classification practices regarding imported cab chassis. The report subsequently issued by the GAO noted that while it was difficult to conclude that the current classification practice was clearly wrong, the GAO was of the opinion that the practice was questionable (Report by the Comptroller General of the United States, GGD 79–19, December 13, 1978). The International Trade Commission (ITC) has recently released a report commenting on the GAO study (Assessment of the

December 13, 1978, Report of the Comptroller General of the United States, May 18, 1979). The ITC report concluded that the present cab chassis classification practice is "clearly wrong."

After reviewing the GAO report, the Treasury Department reaffirmed the correctness of the existing practice of classifying imported cab chassis as parts. This decision was based upon the following considerations:

(1) The fundamental Customs principle that the tariff classification of an article must be determined by its condition at the time of importation.

(2) The fact that an essential part of a truck, the cargo bed, is missing from cab chassis.

(3) Evidence that legislative history favors the classification of cab chassis as parts.

(4) The "chief use" of cab chassis as parts of vehicles and not as vehicles themselves.

(5) Administrative practice of long standing.

The second of these considerations was founded on the opinion of the Court of Customs and Patent Appeals in *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973). However, that court issued a decision in June which expressly overruled the majority rationale in *Authentic Furniture*, but approved the result reached. (*Daisy-Heddon, Div. Victor Comptometer Corp.* v. *United States*, C.A.D. 1228 (1979).)

In *Daisy-Heddon*, the court stated:

> * * * The result in *Authentic Furniture Products* does not merely depend on the "essential" nature, be it functional or commercial, of the omitted side rails. It is abundantly clear from the opinion of the Customs Court, which was approved by this court, that the basis of the decision in that case was that "it is the determination of this court that the importations do not constitute a substantially complete article." 68 Cust. Ct. at 215, 343 F. Supp. at 1380. Such a determination does not depend merely on the presence or absence of an "essential" part.
>
> There are several factors which may come into play in the determination of whether an article is substantially complete. In a case, such as this, where the article is incomplete due to the omission of one or more parts, as opposed to where an article is incomplete because the material which comprises the article is in need of further processing, the following factors can be relevant: (1) Comparision of the number of omitted parts with the number of included parts; (2) comparision of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparision of the cost

of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and (5) trade customs, i.e., does the trade recognize the importation as an unfinished article or as merely a part of that article. This list of factors is not exhaustive; it must be recognized that fewer than all of the above factors, or additional factors, may come into play depending on the particular importation. The outcome of each case will always depend on the particular merchandise involved. It would be oversimplification of an essentially difficult juridical problem, often involving a determination of congressional intent, for us to attempt to provide anything more than guidelines for the trier of fact to follow in assessing a given case. * * *

On the basis of the court's opinion in *Daisy-Heddon*, Customs is again reviewing the tariff classification of imported cab chassis. As part of this review, written comments are invited from interested parties concerning the application of *Daisy-Heddon* to imported cab chassis. The comments should be directed primarily to the following issues:

(1) Are the five factors cited by the court in *Daisy-Heddon* applicable to the tariff classification of cab chassis or should other factors or expressions of legislative intent govern?

(2) If the five factors are applicable, in what manner should they be applied? (Factual information regarding the number and relative value of parts involved may be relevant to this question.)

(3) Does the opinion of the court in *Daisy-Heddon* require a finding that cab chassis should be classified under the superior heading "Motor vehicles (except motorcycles) for the transport of persons or articles"?

(4) If so, should they be classified under the inferior heading "Automobile trucks valued at $1,000 or more, and motor buses: Automobile trucks" (692.02, TSUS) or as "Other" (692.10, TSUS)?

COMMENTS

Consideration will be given to any written comments, preferably in triplicate, timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b) Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices

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in Customs and the Treasury Department participated in its development.

JACK T. LACY,
Commissioner of Customs.

Approved: October 11, 1979.
JOHN P. SIMPSON,
Assistant Secretary of the Treasury.

[Published in the Federal Register Nov. 17, 1979 (44 FR 59984)]

U.S. Customs Service

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Assistant Commissioner,
Regulations and Rulings.

(C.S.D. 79–342)

Value: Whether Interest Charges Incurred by the Exporter and Charged to the Importer Separately From the Unit Price of the Goods Are Dutiable

Date: January 23, 1979
File: R:CV:V DA
541828

Issue.—Are certain interest charges to be paid by the importing subsidiary to its foreign parent-manufacturer included in the appraised value of the imported merchandise?

Facts.—You state that the U.S. subsidiary-importer will select the piece goods which will be used in the manufacture of the imported merchandise. The parent manufacturer will pay for the piece goods and include the cost of the material in the price of the finished goods imported into the United States. The manufacturer desires to arrange for delayed payment of the piece goods and will incur interest charges from the supplier as a result of the delayed payment. The manufacturer will separately bill the importer for these interest charges and not include them in the price for the finished goods. For the purpose of this ruling you ask that it be assumed that the price of the goods, exclusive of the interest charges, between the importer and the exporter satisfies the requirement for appraisement on the basis of export value, U.S. value, or constructed value.

Law and analysis.—For the purposes of this ruling it is assumed that the imported merchandise is not on the "Final List" and, there-

fore, subject to the provisions of section 402, Tariff Act of 1930, as amended. The primary basis of value of imported merchandise established by section 402(a) is the export value of the merchandise. Section 402(b) defines export value as:

> the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, * * *

Section 402(f) provides a number of definitions for terms found in section 402(b). Section 402(f)(1)(B) is of particular importance where the transaction involves related parties. This section defines the term "freely sold, or, in the absence of sales, offered for sale," as sales or offers "in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise * * *." Your attention is directed to the decisions of the Court of Customs and Patent Appeals in *J. L. Wood* v. *United States*, 62 CCPA 25, C.A.D. 1139 (1974), and *D. H. Baldwin Co.* v. *United States*, C.A.D. 1208 (June 1, 1978) and T.D. 78–344, September 27, 1978, concerning the criteria to be used in determining whether the price to a selected purchaser fairly reflects the market value so as to establish export value.

In making the determination of whether or not the price of the merchandise to the importer fairly reflects market value, Customs must determine if the sales are bona fide arm's-length transactions. Such a determination necessarily requires an examination of the relationship between the importer and the manufacturing exporter. *Spanexico, Inc.* v. *United States*, 64 CCPA 6, C.A.D. 1176, 542 F. 2d 568 (1976). In the proposed transaction you have stated that the manufacturer is the parent of the importer. It is also submitted that the invoice price to the importer will not include interest charges that were incurred by the exporter in the manufacture of the merchandise. It is our opinion that the proposed transaction is not a bona fide arm's-length transaction and that the invoice price of the merchandise, exclusive of the interest charges, does not fairly reflect market value. Therefore, the invoice price, exclusive of the interest charges, does not satisfy the requirements for appraisement on the basis of export value.

In the event that the imported merchandise does not have a statutory export value, then the imported merchandise may be valued according to the U.S. value. Generally, section 402(c) defines U.S. value as the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar

merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption. Absent any indication to the contrary, we assume that the importer will recoup the interest charges through the resale price in the United States. Various allowances to the U.S. value are permitted to be made pursuant to subsections (1), (2), and (3) of section 402(c). The statutory language of section 402(c)(1) indicates that allowances are to be made for general expenses usually incurred in connection with sales made in the United States. The interest charges presented in the proposed transaction are not expenses to be incurred in connection with the sales in the United States and are, therefore, not permitted as an allowance under section 402(c)(1). The definitions contained in section 402(f) are applicable to U.S. value. Attention should also be given to section 402(g) which provides additional requirements in the case of transactions between related persons.

In the event that neither export value, nor U.S. value may be satisfactorily established, resort must be made to the constructed value. Initially, a determination must be made as to whether the interest charges are costs associated with the cost of materials under section 402(d)(1), or as general expenses under section 402(d)(2). General expenses include "* * * all salaries, wages, and commissions, traveling expenses, advertising, rents, taxes on buildings, stationery, stenographic, telephone and telegraph expenses, costs of delivery, depreciation on plant and equipment, and *other actual outlays*." (Italic added.) *United States* v. *Alfred Dunhill of London, Inc.*, 32 CCPA 187, 189, C.A.D. 305 (1945). The interest charges in the instant case are not charges that are a necessary part of the cost of materials involved in the completion of the instant merchandise. Indeed, you state in your letter that the interest charges arise through an accounting procedure designed for "maximum financial benefit" of funds used for the payment of materials. As the interest charges are "actual outlays," it follows that they are a part of general expenses.

You have submitted that the interest charges would be nondutiable under the principles enumerated in *Charles Stockheimer, et al.* v. *United States*, 44 CCPA 92, C.A.D. 642 (1957) and ORR ruling 563–71 dated October 15, 1971. We disagree. In *Charles Stockheimer, supra*, the court addressed the issue of the cost of materials and not usual general expenses. Therefore, the principles expressed in that case are not applicable to the instant ruling. ORR ruling 563–71, dated October 15, 1971, concerned the dutiable status of interest charges that were incurred by the *importer* who delayed payment for the merchandise after its importation. In the 1971 ruling it was assumed that the exporter's unit price fairly reflected market value and that the importer incurred the interest charges by deferring payment to the exporter.

In that transaction the interest charges were held to be nondutiable. Your proposed transaction is distinguishable from the facts of the above-mentioned ruling in that the interest charges are to be incurred not by the importer, but rather, by the manufacturing exporter. Furthermore, as was discussed above, we conclude that the unit selling price to the importer, exclusive of the interest charges, does not fairly reflect market value. Therefore, the ORR ruling 563–71 is not applicable to your proposed transaction.

Holding.—The exporter's selling price, exclusive of the interest charges, does not fairly reflect market value and, therefore, does not fulfill the requirements for appraisement on the basis of export value. Absent an export value, the appraising officer at the port of entry will determine if the importer's selling price for domestic consumption, exclusive of the interest charges, satisfactorily fulfills the requirements for appraisement on the basis of U.S. value. In the event that a U.S. value cannot be satisfactorily established, the appraising officer will determine the constructed value of the merchandise. Under constructed value the interest charges will be included in the actual general expenses of the manufacturer, and, if the manufacturer's actual general expenses are determined to be the "usual" general expenses, the interest charges will be dutiable.

(C.S.D. 79–343)

Classification: Ankle Physiotherapy Appliance

Date: March 1, 1979
File: CLA–2:R:CV:MSP
058856 SC

This ruling concerns the tariff status of an ankle physiotherapy appliance.

Facts.—Descriptive literature depicts the ankle physiotherapy appliance as a therapeutic device intended to be used under professional supervision for patients recovering from an ankle injury. From the examination of various drawings and a transparent color slide, it appears that the appliance consists of a footrest, which operates in opposition to a tension spring, and a component for recording the progress of the patient while he exercises the ankle by the repetition of various movements.

Issue.—The issue presented is whether an ankle physiotherapy appliance intended for use in facilitating the use of a twisted or broken ankle in helping a patient gain flexibility and strength in all positions is considered as a mechanotherapy appliance under item 709.40,

Tariff Schedules of the United States (TSUS), with duty at the rate of 6 percent ad valorem.

Law and analysis.—Item 709.40, TSUS, provides for mechanotherapy appliances and massage apparatus and parts thereof at 6 percent ad valorem.

In C.I.E. 1/64, at page 546, it is stated that the mechanotherapy appliances covered in item 709.40 consist of those primarily used to treat diseases of the joints and muscles by mechanical reproduction of various movements. Such articles, however, are those that are ordinarily used for treatment given under medical supervision, and do not include ordinary exercising or physical culture equipment such as rowing machines and the like.

In ORR ruling 73–0173, abstracted as T.D. 73–106(16), we held that an electrical therapeutic device usually used under medical supervision for exercising the foot muscles and ankle joints of postoperative patients was classifiable under the provision for mechanotherapy appliances, in item 709.40, TSUS.

Accordingly, it is our opinion that the mechandise in question is classifiable under the provision for mechanotherapy appliances under item 709.40, TSUS, dutiable at the rate of 6 percent ad valorem.

Holding.—The ankle physiotherapy appliance is classifiable under the provision for mechanotherapy appliances under item 709.40, TSUS, dutiable at the rate of 6 percent ad valorem.

(C.S.D. 79–344)

Customhouse Brokers: Triennial Report; 19 U.S.C. 1641

Date: January 26, 1979
File: BRO 3–01 R:E:E
306907 DW

Your letter of December 26, 1978, requested that we give prompt attention to clarifying the situation involving implementation of amendments to section 641, Tariff Act of 1930, as amended. Those amendments require a triennial status report from all licensed brokers beginning February 1, 1979.

It is the Customs Service position that the amendment to section 641, which requires a status report, does not authorize Customs to cancel a broker's license if he fails to comply. The purpose of this amendment was to allow Customs to ascertain which brokers, among all licensed brokers, are actively engaged in business.

It should be noted that the Customs Service has a recurring problem with persons who have been licensed and for various reasons have

never actively engaged in a customhouse brokerage business, or have retired, or gone into other occupations. While Customs may not cancel their licenses under part 111, subpart D, Customs Regulations, many of these people have not been heard from for 30 or 40 years, and obviously should not be placed in the same category as active brokers. We anticipate using the reporting requirement to effectuate such a classification system.

This office has instructed various Customs regions to request brokers to follow the proposed regulations to meet the February 1, 1979, reporting requirements. Additionally, copies of this ruling will be disseminated to our field offices and the importing public, by publication under the Customs Issuance System, and in the CUSTOMS BULLETIN.

(C.S.D. 79-345)

Vessels: Disembarkation of American Crewmembers From American Vessel; Effect on Vessel's Exemption From Entry Requirements

Date: January 30, 1979
File: VES-5-07-R:CD:C
103670 MKT

This decision concerns the effect of the disembarkation of American crewmenbers from an American vessel on the retention of an exemption from the entry requirements of title 19, United States Code, section 1434, granted the vessel pursuant to section 1441(4) of title 19.

Issues.—Whether an American vessel exempt from entry under title 19, United States Code, section 1441(4), loses its exemption and is required to make entry pursuant to section 1434 of title 19 if:

(1) American crewmembers who terminate their employment on the vessel disembark and make entry on declarable acquisitions.
(2) American crewmembers who continue employment on the same vessel disembark and make entry on declarable acquisitions.

Facts.—An American vessel exempt from entry under section 1441(4) lands American crewmembers who terminate their employment on the vessel and lands on shore leave other American crewmembers who continue their employment on the same vessel. All crewmembers who disembark make entry on their declarable acquisitions.

Law and Analysis.—Title 19, United States Code, section 1441(4) provides an exception from the entry requirements of section 1434 of title 19 for:

> Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within 24 hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the appropriate Customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; * * *.

Headquarters Circular VES–5–MA, dated September 13, 1963, lists some activities which do not disqualify a vessel from the exemption provided under section 1441(4). You interpret the intent of that circular to allow a vessel to retain the entry exemption when any crewmember terminates employment on the vessel and is discharged by "mutual consent," but to disallow the entry exemption when crewmembers go on shore leave.

The intent of the circular is not to provide an exclusive list of the activities in which a vessel may engage and still retain its entry exemption. The Customs Service has never ruled that a vessel entitled to an exemption from entry requirements would lose its exemption merely because its crewmembers are granted shore leave. (See enclosed letter to Collector of Customs, Los Angeles, dated January 17, 1958.) However, crewmembers who terminate their employment and who take shore leave must declare the articles they acquired abroad and their other declarable acquisitions when they disembark.

One reason that the vessel exemption continues when crewmembers take shore leave is that the activities of crewmembers on shore leave are not considered to be a transaction of vessel business. Furthermore, the exemption continues because the landing of an individual seaman's personal belongings or merchandise purchased abroad is not considered to be a landing of merchandise by the vessel on which he is or was employed.

Holding.—An American vessel exempt under title 19, United States Code, section 1441(4) from the entry requirements of section 1434 of title 19, retains its exemption if:

(1) American crewmembers who terminate their employment on the vessel disembark and make entry on declarable acquisitions, or
(2) American crewmembers who continue employment on the same vessel disembark on shore leave and make entry on declarable acquisitions.

301–547—79——3

(C.S.D. 79-346)

Coastwise Laws: Cable-Laying Repair Operations by Foreign-Flag Vessel

Date: January 30, 1979
File: VES-3-01-R:CD:C
103651 MKT

This decision concerns the applicability of the coastwise laws to cable-laying repair operations by a foreign vessel.

Issue.—Whether the use of a foreign-flag vessel to transport cable between two points in the United States to be used in repairing or replacing existing cables and to land surplus cable to be stored for future repair and maintenance operations violates title 46, United States Code, section 883 (46 U.S.C. 883).

Facts.—In the summer of 1977, a Canadian flat-deck, cargo barge equipped with portable cable-laying equipment, laded and transported cable along an existing cable between the Orcas and Shaw Islands in the United States to be used in the repair of the existing cable. During the duration of the repair operation the barge carried the replacement cable from the shore to the repair site and back to the shore before it was laid down, and carried sections of existing cable taken up for repair to the shore and back to the repair site.

In September 1977, the same barge towed by Canadian and United States tugs laid cable again off Orcas Island. After the cable-laying operation, the barge allegedly landed surplus cable at a site other than the cable-laying operation site to be stored for use in the future maintenance of the cable.

At other times, another Canadian vessel, the (name of vessel), has been used as a cable-laying maintenance, recovery, and relaying vessel. This vessel allegedly has been used to move the cable from its storage site to its emplacement site in the U.S. San Juan Islands connecting the island substations of the (name of company).

Law and analysis.—Section 883 of title 46 prohibits the transportation of merchandise between points in the United States in a foreign vessel. However, not every movement between points in the United States is deemed to be a transportation within the meaning of the coastwise laws. Aspects of cable laying and pipelaying operations have been held not to be coastwise trade for the purposes of section 883.

The Customs Service has held that the sole use of a vessel to lay cable between points in the United States does not violate the coastwise laws. It is the fact that the cable is not landed but is merely paid out in the cable-laying operation which makes the operation permissible. There is no distinction made between the repair of existing

cable and the laying of new cable. Therefore, the use of a vessel to repair cable is not a use in the coastwise trade. The characteristic of cable laying, the absence of a landing of merchandise, which places the activity outside the coastwise laws, provides the basis for our ruling that the transportation of cable and repair materials by a vessel, to be used by the crew of the vessel, in the repair of the cable, is not prohibited by the coastwise laws.

Since the replacement cable and the repaired sections of existing cable are repair materials used by the repair vessel in the cable repairs, the transportation of those items by the repair vessel is not prohibited by the coastwise law so long as they are not landed at a second point in the United States. If the Canadian barge actually landed the surplus cable at a place other than the place of lading, then the barge will have violated section 883.

Legitimate equipment and stores of the repair vessel carried for its use are not considered merchandise for the purposes of section 883. The transportation of cable to be used in the repair operation by a foreign vessel, other than the repair vessel, is prohibited by the coastwise laws. Furthermore, the transportation of "salvaged" materials other than cable retrieved incidentally to a cable repair operation must be performed by a vessel qualified for the coastwise trade.

Holding.—A foreign vessel which transports cable to be used by the vessel to repair or replace existing cable is not engaged in the coastwise trade of the United States for the purposes of section 883. However, if after loading cable at a place in the United States, a foreign-flag vessel lands the cable, other than cable retrieved to be repaired, at a second place in the United States, the vessel will be considered to have transported merchandise in the coastwise trade pursuant to section 883.

(C.S.D. 79-347)

Vessel Entrance: Unlading of Bulk Cargo Elsewhere Than at Port of Entry

Date: January 31, 1979
File: VES-5-13-R:CD:C
VES-5-05
103282 LLR

This ruling concerns the application of 19 CFR 4.35.

Issue.—Can a foreign-flag vessel which is carrying a cargo of foreign crude oil and which enters at a domestic port proceed to an offshore lightering area outside the 3-mile limit and the oil then be lightered by another foreign-flag vessel for delivery back to the same U.S. port?

Facts.—On occasion, the (name of company) brings a foreign-flag vessel carrying foreign crude oil into the San Francisco Bay area. Although the (name of company) intends to lighter the incoming vessel with its own U.S.-flag vessel, this vessel is sometimes unavailable. The foreign-flag vessel has already been entered and its entire cargo of oil is to be discharged in San Francisco. The cargo, however, has not been entered, but an application and special permit for immediate delivery may have been filed, prior to the enactment of Public Law 95–410. This change is because I.D. is no longer available except in limited cases.

The (name of company) would like to divert the foreign-flag vessel to the San Clemente lightering area, approximately 20 miles offshore, and use a foreign-flag tanker to lighter the vessel. The foreign-flag lightering vessel would transport the oil back to San Francisco.

Law and analysis.—As described by the inquirer, the foreign-flag vessel, arriving in the Port of San Francisco intends to have its cargo lightered by a U.S.-flag lightering vessel at the time it arrives within the port. Pursuant to the provisions of section 141.1(a), Customs Regulations (19 CFR 141.1(a)):

> Duties and the liability for their payment accrue upon imported merchandise on arrival of the importing vessel within a Customs port with the intent then and there to unlade. * * *

Therefore, whether the vessel proceeds to an alternate lightering area or remains within the port limits of San Francisco would not modify the responsibilities which are triggered by the entry of the imported vessel. In addition to the liability for duty referred to above, the consignee must enter the merchandise within 5 working days after the entry of the importing vessel, unless a longer time is authorized by the district director. See 19 CFR 141.5.

Once the vessel is entered, the district director has the authority, upon written application, to permit the unlading of bulk cargo, as is the case here, at anyplace outside the port. See 19 U.S.C. 1447 and 19 CFR 4.35. If the district director grants such permission to unlade, a sum sufficient to reimburse the Government for any compensation, travel, and subsistence expenses of the officers appointed to supervise the unlading may have to be deposited. In addition, the manifest would have to be amended to reflect that the cargo, which is still destined for the Port of San Francisco, will be offloaded on the high seas, for delivery to the Port of San Francisco. If this procedure is followed, a written application for diversion under section 4.33, Customs Regulations (19 CFR 4.33), will not have to be presented, because the cargo is not being diverted to another port of entry. Customs officials will, however, have to take ullages before the vessel proceeds to the lightering area. When the lightering operation is

complete, final ullages will have to be taken. These measurements are required to insure verification of the information container in the manifest. The taking of final ullages will require the vessel to return to the Port of San Francisco unless the district director agrees to permit a Customs officer to take the final reading aboard the vessel on the high seas.

Any foreign-flag lightering vessel used in the operation described will have to report arrival and enter pursuant to 19 U.S.C. 1433 and 1435. Furthermore, the manifest required by 19 U.S.C. 1431 must be presented, and Customs officials will take ullages as required. The manifests presented by the lightering vessels should be cross-referenced to the manifest of the mother vessel to avoid erroneous importation figures being presented to the Department of Commerce.

Actual entry of the merchandise will occur after the lightering vessels discharge their cargo.

Holding.—Pursuant to the authority granted under 19 U.S.C. 1447 and section 4.35, Customs Regulations (19 CFR 4.35), the district director may permit a foreign-flag vessel carrying foreign crude oil to proceed to a lightering area outside territorial waters after the vessel has been entered in order to have the crude oil lightered back to the same port, at which time the merchandise will be entered by the importer.

(C.S.D. 79-348)

Classification: Woven and Nonwoven Disposable Headwear

Date: February 1, 1979
File: CLA-2:R:CV:MA
056976 SST

This is in reference to your letter of June 28, 1978, regarding the tariff duties on certain disposable headwear. Samples of the headwear were submitted with your letter.

Sample A is a nonwoven fabric made by a dry process and found to be of 100 percent rayon fibers. The fiber web was made on a carding machine, cross-lapped and then impregnated with a resin binder. An elastic, which is wound with textile yarns, is sewed to the edge of the hat to prevent the item from falling off the head. This elastic is not braided.

Sample B has a printed blue/white portion which is a nonwoven fabric made by a wet process. It consists of rayon, cotton, and wood pulp fibers. The blue portion is composed of two layers of paper made by a wet process of wood pulp fiber with a net of plastic material and a

reinforcing scrim between the two layers of paper. The ties are of spunbonded, TYVEK-type, nonwoven fabric. TYVEK is defined as yarn-bonded, nonwoven material composed of polyethylene.

Sample C has a darker blue portion which is the same as the fabric in sample A. The lighter blue portion and the ties are the same material as the blue portion and ties in sample B.

Samples D and E swatches are made of the same material as sample A.

Sample F swatch is a paper of wood pulp made by a wet process. No binders are apparent.

Samples A to E, if manufactured on a papermaking machine which has not been modified, are classifiable under the provision for other headwear in item 703.75, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 8.5 percent ad valorem.

Articles which are classifiable in item 703.75, TSUS, are eligible for duty-free entry under the generalized system of preferences (GSP) provided that the requirements for GSP treatment set forth in general headnote 3(c), TSUS, copy enclosed, are met.

If the hats are not made on a papermaking machine, they are classifiable under the provision for headwear, of manmade fibers, not in part of braid, not knit, in item 703.15, TSUS, and dutiable at the rate of 25 cents per pound plus 20 percent ad valorem.

Sample F is classifiable under the provision for other headwear in item 703.75, TSUS, and dutiable at the rate of 8.5 percent ad valorem.

The above merchandise is not subject to international textile trade agreements.

Copies of this ruling will be forwarded to Customs offices in Nogales, El Paso, Laredo, and Los Angeles so that merchandise similar in construction and manufacture to your merchandise will be uniformly classified.

(C.S.D. 79–349)

Marking: Substantial Transformation of Saxophone Bodies as Exception to Country-of-Origin Marking Requirement

Date: February 2, 1979
File: MAR–2–05–R:E:R
709098 JB

This ruling concerns the country-of-origin marking of imported saxophone bodies and components for processing into finished musical instruments.

Issue.—Are imported saxophone bodies with posts, tone holes, and finished brass surfaces excepted from country-of-origin marking if

imported hinge tubes, keys, guards, cork pads, and mouthpieces are subassembled and added by the importer to form finished musical instruments?

Facts.—The major brass components for the musical instrument, a saxophone, are made outside the United States. The saxophone body (branch, bell, and bow) is imported in one piece with finished brass surface, 43 soldered posts, and 22 tone holes. Unattached palm, pad, and connection keys, hinge tubes, guards, and mouthpieces, and upper octave keys are also imported into the United States by the importer, a manufacturer of musical instruments.

The domestic operations performed on the saxophone body include the reaming and tapping of post holes, tone hole filing, mounting and shaping of hinge tubes, mounting and adjustment of palm, pad and connection keys, cork pad fitting, guard additions, and mouthpiece assembly with the addition of an upper octave key, ligature, and reed. In total, the U.S. manufacturer adds 33 subassemblies and approximately 120 individual pieces to the saxophone body to form the musical instrument.

The processing or further manufacture is performed at work stations on a production line; the operator at each station specializing in a fixed number and type of operations to maximize his accuracy and skill. Each saxophone is then inspected and tested for musical quality.

Law and analysis.—19 CFR 134.35 provides that under the principle of the decision in the case of *United States* v. *Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98), the manufacturer who converts an imported article into a different article will be considered the "ultimate purchaser." A substantial transformation occurs where, by further manufacture, a sufficient physical transformation of the imported article is effected. In the case of saxophone bodies imported without the attachment of various key, guard, and mouthpiece assemblies, substantial transformation is effected by the substantial cutting, trimming, assembly, mounting, and adjusting of key, tube, and mouthpiece components. The substantial transformation occurs as a result of the totality of the further manufacturing performed after the articles are imported into the United States and not by the effect of any specific process or assembly. The domestic manufacturer is thus deemed to be the ultimate purchaser (19 CFR 134.1(d)(1)).

Holding.—The imported saxophone bodies with posts, tone holes, and finished brass surfaces are substantially changed by the domestic operations performed on the articles, the addition of imported parts, and the assembly of all components into finished musical instruments, provided the articles are subjected to the totality of the manufacturing processes described herein. Accordingly, the U.S. manufacturer is determined to be the ultimate purchaser, and the saxophone bodies

and parts may be excepted from country-of-origin marking under 19 U.S.C. 1304(a)(3)(H).

(C.S.D. 79-350)

Temporary Importation Under Bond: Item 864.50, TSUS; Entry in the Name of More Than One Nonresident

Date: February 8, 1979
File: CON-9-03-R:CD:D L 209700

Issue.—May professional equipment or tools of trade be admitted temporarily free of duty under bond (TIB) pursuant to item 864.50, Tariff Schedules of the United States (TSUS), in the names of more than one nonresident on the same TIB entry?

Facts.—A customhouse broker has requested permission to enter two portable oil well drilling rigs under item 864.50, TSUS, in the name of three nonresident supervisors. The broker would make entry as importer of record under his term-temporary importation bond (CF 7563-A) for account of the three nonresidents. The reason for naming three nonresidents on the same entry is to permit a scheduled rotation of each nonresident. After being on location in the United States for 20 days, one of the nonresidents named in the entry would return to Canada in an off-duty status for a period of 10 days, and would then return to the United States to supervise drilling operations for an additional 20-day period. By entering the drilling rigs in the names of three nonresidents, two of the individuals would be present to supervise drilling operations in the United States at all times.

Law and analysis.—Item 864.50, TSUS, provides for the temporary admission free of duty under bond for:

> Professional equipment, tools of trade, repair components for equipment or tools admitted under this item, and camping equipment; all the foregoing imported by or for nonresidents sojourning temporarily in the United States and for the use of such nonresidents.

Headnote 1(b) to schedule 8, part 5, subpart C, provides that:

> For articles admitted into the United States under item 864.50, entry shall be made by the nonresident importing the articles or by an organization represented by the nonresident which is established under the laws of a foreign country or has its principal place of business in a foreign country.

The Customs Service has consistently held that the tools or equipment must be intended for use by the nonresident making entry or for use under his supervision. Entry under item 864.50, TSUS,

is personal to the nonresident, is nontransferable, and terminates when the nonresident either ceases to use the imported merchandise or when it ceases to be used under his direct supervision.

Inasmuch as the privilege of entering such equipment runs to the nonresident making entry and to no other person, Customs has never allowed the substitution of one nonresident supervisor or use of the equipment so entered for another, regardless of the circumstances.

Since it is now proposed to enter two portable drilling rigs in the names of three nonresident supervisors on one TIB entry, a look at the legislative history, as revealed in Senate Report No. 1618, 90th Congress, 2d session, 1968, U.S.C., Congressional and Administrative News; volume 3, page 4563, is in order. The relevant part of the Senate report in discussing what is now item 864.50, TSUS, provides:

Section 2 of H.R. 18373 would in part implement the Customs Convention on the Temporary Importation of Professional Equipment. This convention obligates each contracting party to grant temporary admission without the payment of duty of equipment defined in the annexes to the convention. Annex A of the convention refers to "equipment for the press or for sound or television broadcasting"; annex B to "cinematographic equipment"; and annex C to "other professional equipment." The equipment must be such as is necessary for the exercise of the calling, trade, or profession of a person visiting a country to perform a specified task, and must be used *solely by or under the personal supervision* of the visiting person for that task. The equipment need not be owned by the visiting person but it must be imported by him or by an organization he represents, which organization must be established under the laws of a foreign country or have its principal place of business in a foreign country.

Item 864.50 of the TSUS presently allows temporary admission into the United States, without the payment of duty, of "professional equipment, tools of trade, and camping equipment imported for their own use by nonresidents sojourning temporarily in the United States." The present scope of the terms "professional equipment" and "tools of trade" in item 864.50 of the TSUS is at least as broad as the term "equipment" in the convention. Moreover, in practice, conditions comparable to the aforementioned conditions which apply to "equipment" under the convention apply to "professional equipment" and "tools of trade" under item 864.50, except that amendment of the latter is required to authorize an organization represented by the nonresident visiting the United States to make entry of the equipment. Section 2(a) of the bill, as reported, amends item 864.50 to allow the equipment to be imported by or for the nonresident, and *section 2(b) pro-*

vides for the temporary entry to be made either by the individual nonresident or by the foreign organization he represents. The actual entry of the equipment could thus be made by a foreign organization, to satisfy the terms of the convention. * * *

* * * Present tariff item 864.50 concerns professional equipment, tools of trade, and camping equipment. Camping equipment as such is not covered by the convention. However, since the proposed amendment to item 864.50, as it applies to camping equipment, would only allow the mechanics of entry to be performed by an organization *as well as by an individual*, it is not considered necessary or desirable to differentiate between camping equipment and the other articles covered by item 864.50. [Italic added.]

Based upon the Senate report, it is our view that it was the intent of Congress to limit the privilege of temporarily admitting professional equipment free of duty to an individual nonresident or a foreign organization represented by an individual nonresident for use solely by or under the personal supervision of the nonresident to perform a specified task.

With respect to the case at hand, the TIB entry would cover two drilling rigs which would be supervised by three rotating supervisors. It appears that at any given time two nonresident supervisors would be present in the United States while the third would be in an off-duty status in Canada. It is clear that at no time would the two drilling rigs covered by the TIB entry be under the personal supervision of an individual nonresident supervisor.

Further, while the Customs Service has held, most recently in T.D. 78–280, that it is not necessary that the nonresident be physically present to personally witness the use of the imported merchandise at all times, during any absence the supervisor must retain full personal control over the use of the equipment to avoid breach of the entry bond. Under the facts presented, the imported equipment is not under the full personal control of an individual nonresident supervisor at all times. Neither, in our view, could it be said that if an individual nonresident supervisor were named on the entry bond and then, on a regular basis left the country for 10 out of every 30 days in an "off-duty" status, he could reasonably be considered to retain full personal control over the operation of the equipment.

Holding.—Temporary admission free of duty under bond of professional equipment or tools of trade is personal to an individual nonresident or an organization represented by him. Such equipment or tools of trade may not be admitted temporarily free of duty under bond pursuant or item 864.50, TSUS, in the name of more than one nonresident on the same TIB entry.

(C.S.D. 79-351)

Marking of Outer Containers as Exception to Country-of-Origin Marking Requirement

Date: February 12, 1979
File: MAR-2-05-R:E:R
709719 JB

This ruling concerns the country-of-origin marking of laparotomy gauze sponges imported into the United States.

Issue.—Are individual laparotomy gauze sponges imported for medical or surgical use required to be marked to indicate the country of foreign origin if the sponges are repacked and sterilized for further distribution and sale to medical supply companies after importation?

Facts.—Cotton gauze sponges are manufactured and shaped abroad and shipped in cartons in bulk. The U.S. importer, in one operation, sterilizes and repacks the laparotomy gauze sponges in small packages of five each. Five small packages are then placed in a larger package which are labeled "Packaged and sterilized in U.S.A. for (*name of various U.S. medical supply companies*), (*address or locality*)."

Law and analysis.—Articles which are imported and then repacked in the United States must ordinarily be individually marked to indicate the name of the country of origin at the time the items are withdrawn for consumption unless the articles or their containers or both are granted a specific origin-marking exception (19 U.S.C. 1304(a)(3); 19 CFR 134.13). Cut laparotomy gauze sponges imported into the United States may be marked to indicate country of origin by methods sufficient to indicate the origin to ultimate purchasers (surgeons and medical personnel) and which will be legible after sterilization. The items are capable of origin marking by several methods and repacking and sterilization do not constitute a substantial transformation of the articles (19 CFR 134.35).

District Directors of Customs may, by arrangements and in their discretion, authorize an exception from origin marking of imported articles after release from Customs custody if the containers in which the articles are repacked will indicate the foreign origin to the ultimate purchasers. Under such an arrangement, the importer verifies the origin marking by the submission of a certification of the marking prior to the liquidation of the entry pursuant to 19 CFR 134.34.

As the laparotomy gauze sponges will reach ultimate purchasers in containers enclosing five smaller packages containing five sponges each, the outer containers may be marked to indicate the country of origin under repacking arrangements satisfactory to the District Director of Customs. If the location of the U.S. distributor or the

words "Packaged and sterilized in U.S.A." appear on the outer container, the packages are required to be marked to indicate the name of the country of origin preceded by "Made in" or "Product of" or other words of similar meaning under the provisions of 19 CFR 134.46.

Holding.—Individual laparotomy gauze sponges imported in cartons in bulk which will be sterilized and repacked in small packages for distribution and resale to ultimate purchasers (physicians and medical personnel) are required to be marked to indicate the country of origin. Under the provisions of 19 CFR 134.34, however, the items may be released from Customs custody without marking if satisfactory arrangements are made with the District Director of Customs to repack and mark the containers to indicate the country of origin pursuant to 19 U.S.C. 1304(a)(3)(D).

(C.S.D. 79–352)

Entry: Imported Motor Vehicles Not Conforming to EPA and DOT Standards

Date: February 12, 1979
File: RES–2–16 R:E:R
705487 DDK

This ruling has to do with Customs responsibilities and obligations under section 12.73(b)(5) (iii) through (vii) and 12.80(b)(1) (v) through (vii) Customs Regulations, with respect to certain imported motor vehicles.

Issue.—In the case of motor vehicles imported by nonresidents, members of the armed forces of a foreign country, or foreign government personnel assigned to the United States, for personal use, or vehicles imported for purposes of show, test, experimentation, or repairs, does Customs have any further obligation after receiving the EPA form 3520–1 and DOT form HS–7, and forwarding them to the Environmental Protection Agency and Department of Transportation, respectively? Specifically, should formal entry under bond be required for these vehicles until all requirements, regardless of their nature, are met?

Law and analysis.—Section 12.73 and 12.80, Customs Regulations (19 CFR 12.73 and 12.80) set forth certain procedures for Customs to follow in assisting in enforcement of the requirements of the Environmental Protection Agency and the Department of Transportation with respect to imported motor vehicles. In certain cases, such as when the vehicle does not conform to emission or safety standards, and the importer states that he will bring it into conformity, bond must

be given to assure that the vehicle will be brought into conformity or the required certificate presented, as provided in sections 12.73(c) and 12.80(e)(1), Customs Regulations.

In certain other cases, the importer may indicate that he is a nonresident importing the vehicle for personal use, a member of the armed forces of a foreign country, or the Secretariat of a public international organization, or of the personnel of a foreign government on assignment in the United States who comes within the class of persons for whom free entry of automobiles has been authorized by the Department of State, or that the vehicle is being imported for purposes of show, test, experimentation, repairs, or export. These alternatives are covered by blocks 3, 4, 5, 6, and 7 on EPA form 3520–1 and blocks 5, 6, and 7 on DOT form HS–7. In these cases, the Customs Regulations and the forms themselves do not indicate that the motor vehicles are being imported under a Customs bond to assure that any further action will be taken by the importer.

In the case of vehicles imported for such purposes as show, testing, experimentation, repairs or alterations, or competition, a temporary importation under bond entry may be made to avoid paying Customs duties on the vehicles. This may coincidentally provide some additional assurance that the vehicles will be exported.

In general, however, vehicles imported by nonresidents, foreign military, international organization, and government personnel for their personal use are ordinarily released to the importers based on their declaration to Customs at the time of their arrival. The filing of a consumption entry and bond generally would not be required for these importations.

Holding.—The Customs Regulations and EPA form 3520–1 and DOT form HS–7 do not contemplate that a formal consumption entry under bond shall be required in the case of motor vehicles not conforming to emission and safety standards, in the case of vehicles imported for their personal use by nonresidents visiting the United States, foreign military or government personnel assigned to the United States, or other importations falling within the classes covered by blocks 3, 4, 5, 6, and 7 on EPA form 3520–1 and blocks 5, 6, and 7 on DOT form HS–7.

Nevertheless, an importer who checks one of the blocks in question does undertake not a sell a nonconforming vehicle in the United States. Anyone who does sell a nonconforming vehicle in the United States would be considered to be in violation of Customs laws and regulations, in addition to EPA and DOT regulations. In this connection, note headquarters ruling BAG–5–01, R:E:E 304449 K, May 4, 1977.

(C.S.D. 79-353)

Vessels: Whether a Foreign-Built Yacht Arriving in the United States for Repairs Is Imported

Date: February 13, 1979
File: VES-12-02-R:CD:C
103461 RB

To: District Director of Customs, Norfolk, Va.

From: Director, Carriers, Drawback and Bonds Division.

Subject: Internal advice request dated July 12, 1978: Status of the yacht.

Reference is made to your inquiry dated July 12, 1978, together with its enclosures requesting internal advice vis-a-vis the tariff status of the yacht (name) which suffered a devastating fire in the Port of Norfolk on February 3, 1977. Also, we are in receipt of your memorandum which arrived in this division on November 28, 1978, setting forth certain additional facts as well as your conclusions with respect thereto.

By way of background, the yacht (name) built in Scotland in 1963 is of steel construction, 111 feet in length, and twin-screwed. Throughout the entire ordeal, the yacht has been registered in Panama and owned by a Panamanian corporation, although it has been suggested that the owner of the vessel is a resident of the State of Illinois. However, this latter allegation as to American ownership is unconfirmed.

According to the attorney for the owner, in a letter dated May 23, 1978, the yacht having recently concluded its participation in the sailing Olympics in Canada, arrived in Norfolk on November 12, 1976, for extensive repair work prior to its intended permanent departure for the Mediterranean. Norfolk was chosen because of the unavailability of acceptable vessel repair facilities at other ports. Subsequently, on February 3, 1977, while undergoing repairs the vessel caught fire, and according to representatives of the shipyard, was 65 to 70 percent destroyed. By then the yacht had been in port about 5 months.

At any rate, because the owner has now decided to sell the yacht in the United States and wishes to make an appraisement entry to this effect, the question has arisen concerning its tariff status during its stay in the Port of Norfolk. In this connection, you assert in your memorandum that you do not consider the yacht to have been dutiable at any time during her stay in port.

The general rule is that a yacht or pleasure boat is subject to duty as imported merchandise if it is owned by a resident of the United States or brought in for sale or charter to a resident thereof. However, since you specifically assert that the yacht was *never* offered for sale

or charter while in Norfolk, we must conclude that the yacht was not dutiable on this account.

Nevertheless, the remaining question is whether or not the (yacht) on the ground of its allegedly being owned by a U.S. resident, was dutiable at the time of its arrival at Norfolk in November 1976. In this regard, ownership by a foreign corporation, all the stock of which is held by a U.S. resident, is tantamount to ownership by a U.S. resident (see T.D. 54680(14)). Be that as it may, even if owned by a U.S. resident, a yacht, is only presumed to be brought to the United States "permanently" so as to be considered and treated as imported merchandise, which presumption may be rebutted by clear evidence to the contrary (see *Estate of Lev H. Prichard* v. *U.S.*, 43 CCPA 85) To this end, clear evidence which demonstrates that a yacht temporarily entered the United States for repairs is sufficient to overcome the presumption of dutiability (see *American Customs Brokerage Co.* v. *U.S.*, C.D. 4546; also see T.D. 75–134). In this regard we note that during its entire stay in the waters surrounding Norfolk, the yacht was continually and repeatedly under repair. We also note that, before the occurrence of the devastating fire, the aggregate cost of repairs performed while at Norfolk totaled approximately $160,000.

Consequently, based upon the representations proffered by the attorney of the owner in his letter of May 23, 1978, and based upon your conclusion that the yacht was not dutiable at any time during its stay in the Port of Norfolk, we are satisfied that the presumption of dutiability has been successfully surmounted by clear evidence revealing that the intent of the owner was to bring the yacht to the United States only temporarily for repairs and to thereafter permanently remove it to the Mediterranean, this intent ultimately being vitiated by a fire which destroyed nearly 70 percent of the entire craft. Therefore, the yacht was not subject to duty as imported merchandise during the period preceding the fire.

Since the yacht was not dutiable prior to the fire, you have also requested our advice concerning the tariff classification and valuation of the newly reconstructed yacht, should it now be offered for sale in the United States.

As a general proposition, vessels which are not yachts or pleasure boats within the purview of subpart D, part 6, of schedule 6, are not articles subject to the provisions of the tariff schedules. Being exempt from duty under the tariff schedules at the time of the fire, as noted above, the (yacht) may thus be regarded as a "vessel" which is sui generis and not otherwise subject to Customs duty (see *The Newman Co.* v. *U.S.*, C.D. 2739).

Section 4.40, Customs Regulations, provides that:

"* * * parts of the hull and fittings recovered from a vessel which arrived in the United States in the course of navigation and was wrecked in the waters of the United States * * * are free of duties and import taxes * * *".

We find that the (yacht) when it burned was "wrecked in the waters of the United States" within the meaning of this regulation. Hence, because the yacht was a "vessel" not otherwise subject to Customs duty at the time of the fire and because the yacht was "wrecked in the waters of the United States," the fire-ravaged remnants of its hull and fittings should be admitted into the United States free of any duties and import taxes pursuant to section 4.40.

Since the hull and fittings were entitled to enter the United States free of duty under section 4.40 and since American repair parts, materials, and labor were used to restore about 70 percent of the yacht, the status of the rebuilt craft may now be considered that of a U.S.-built pleasure vessel not subject to any Customs assessments. Therefore, the yacht would not be subject to duty under the TSUS should it now be offered for sale in this country.

(C.S.D. 79-354)

Drawback: Transfer of Right to Claim Drawback From One Corporation to Another

Date: February 14, 1979
File: DRA-1-R:CD:D S
209666

Issue.—May a corporation claim drawback on exported articles manufactured with imported merchandise by another corporation that continues to exist?

Facts.—A corporation was authorized to receive drawback under section 313(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), on articles manufactured with imported merchandise and exported by one or more of its divisions. One of the divisions has been separated into an independent corporation incorporated in another State. The new corporation is wholly owned by the parent corporation.

The new corporation wants to claim drawback on exports manufactured with the use of imported duty-paid merchandise, or other merchandise of the same kind and quality, or both, by the parent corporation and by the new corporation itself. In other words, to the extent necessary to maximize drawback, the new corporation wants

to rely on the drawback-related activity of the parent prior to the date of succession.

Law and analysis.—Legal Determination 3740–05, issued February 14, 1978, concerns drawback associated with the output of a factory that is transferred from one corporation to another. The transferor corporation, as in the instant case, continues to exist after the date of transfer. The legal determination states that the new corporation must file a complete drawback application and statement in its own name and recieve a drawback authorization of its own from the Customs Service in order to claim drawback of duty associated with articles that it manufactured itself. The effective date of the new corporation's authorization can be no earlier than the date the factory or division was transferred.

In a legal determination not yet published,[1] we ruled that the right to claim drawback on specific merchandise is a transferrable property right. When a corporation transfers all its rights, assets, and liabilities to another corporation and thereupon ceases to exist, Customs is satisfied, absent specific evidence to the contrary, that the drawback rights have been transferred to the new corporation.

The Customs Service also has ruled that under 19 U.S.C. 1313(b) the same corporation must use in manufacture both the designated imported merchandise and the substituted merchandise of the same kind and quality which are associated with a drawback claim.

Holding.—When a corporation uses in manufacture or production designated and substituted merchandise of the same kind and quality under 19 U.S.C. 1313(b), the corporation may transfer to another corporation its right to claim drawback on the designated merchandise. The corporation to whom the right is transferred may complete the necessary steps to perfect the claim and file for drawback on the designated merchandise under the authority of the transferor corporation's drawback authorization.

With each claim based on the transferor's authorization and records, the transferee must submit a statement describing in detail the transfer of the right-to-claim drawback, including the location of the relevant drawback authorization and records.

The claims may be filed in any Customs region listed in the transferor's drawback statement. Officials of the new corporation may sign drawback documents for the new corporation as "successor to the rights of (transferor) corporation," and in accordance with section 22.45 of the Customs Regulations.

[1] Published as Legal Determination 79–0089; also published in the CUSTOMS BULLETIN as C.S.D. 79–257.

No drawback is payable under 19 U.S.C. 1313(b) unless a single corporation uses both the designated and substituted merchandise related to the claim. Any corporation that uses in manufacture merchandise identified or designated for drawback must have its own drawback authorization.

A corporation authorized to collect drawback of course may complete the necessary steps for drawback and file the claim in its own name rather than transfer the right in the manner described above. Under section 22.21(b) the manufacturer may assign the payment to another corporation as its agent for collection of drawback.

(C.S.D. 79-355)

Classification: Handifuel, a Chemical Composition of Hexamethylenetetramine and a Fatty Acid Wax

Date: February 14, 1979
File: CLA-2:R:CV:MC
059323 JH

To: Chief, Duty Assessment Branch 6/8, New York Seaport.

From: Director, Classification and Value Division.

Subject: Your memorandum of March 21, 1978 (LCS-2-S:C:D8/BST/35) on classification of Handifuel.

Your memorandum concerns the classification of "Handifuel" in the decision of January 12, 1978. The product was said to consist of hexamethylenetetramine and a fatty acid wax. It was classified in item 430.00, Tariff Schedules of the United States (TSUS), with compound rates per item, 425.99 and 425.18, TSUS.

Your view is that item 430.00, TSUS, does not apply, as the so-called fatty acid wax is a mixture classifiable under the provisions of 490.10 to 490.26, TSUS, in which case item 432.00, TSUS, should obtain.

We agree that if the fatty acid wax is not a definable organic compound but simply an identifiable tariff entirety, the product would be a mixture not specially provided for under item 432.00, TSUS.

(C.S.D. 79-356)

Customs-Bonded Warehouse: Whether a Chain and Warning Signs Constitute Sufficient Partition Between Bonded and Nonbonded Portions of a Warehouse

Date: February 14, 1979
File: WAR-1-R:CD:D
209839 L

Issue.—May a Customs-bonded warehouse proprietor, operating under the reduced supervision privileges of Customs Circular WAR-1-0:1:C, dated June 30, 1977, enlarge the bonded warehouse to include an unfenced, unlocked, bonded area to store bonded merchandise?

Facts.—The proprietor of a class 2, Customs-bonded warehouse wishes to relocate and enlarge its existing bond room. The bonded warehouse is used for the storage of alcoholic beverages and the proprietor states that the cost of construction of a fenced bond room would be from $20,000 to $27,000.

The proprietor is presently under the reduced supervision privilege of bonded warehouses as outlined in Customs Circular WAR-1-0:1:C, dated June 30, 1977, and proposes a pilot program for an unfenced, U.S. Customs bond room. This would consist of a designated, chained area, posted with signs reading "U.S. Customs Bond Room—No Admittance—Authorized Personnel Only." The program would be with the understanding that if at any time Customs feels there is any violation of any regulations, the merchandise would be withdrawn immediately or a regulation fenced area would be built. The proprietor is agreeable to an increase in the amount of the bond, if required.

A diagram of the proposed bonded area has been submitted.

Law and analysis.—Section 556, Tariff Act of 1930, as amended (19 U.S.C. 1556), authorizes the Secretary of the Treasury to establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein.

Section 19.3(a), Customs Regulations (19 CFR 19.3(a)), provides in part that all alterations to warehouses of class 2 may be made by permission of the district director without approval of headquarters, U.S. Customs Service. Section 19.1(c), Customs Regulations (19 CFR 19.1(c)), provides in part that when parts of buildings (as is the case here) are used as Customs-bonded warehouses, the bonded and nonbonded portions shall be effectively separated by partitions of substantial materials and construction erected in such a manner as

to render it impossible to enter the premises in the absence of the Customs warehouse officer without such violence as to make the entry easy to detect.

Customs Circular WAR–1–0:1:C of June 30, 1977, covers reduced Customs supervision of certain bonded warehouses. It provides that bonded warehouses of classes 2, 3, or 4 which meet certain criteria shall be considered eligible for reduced supervision of warehouse withdrawals for consumption. The circular does not allow any relaxation of physical security standards for warehouses authorized to operate with reduced supervision of withdrawals for consumption other than the removal of Customs locks from the warehouse or appropriate parts thereof, *to be replaced by equivalent locks selected and owned by the proprietor* [italic added].

Although dimensions are not given, the submitted diagram of the warehouse indicates that the new bond room will be substantially larger than the existing bond room, encompassing one entire end of the warehouse. It appears that the entire lengthwise interior dimension of the new bond room will be open to the remainder of the warehouse, close to what appear to be loading docks, secured only by a chain and warning signs.

Goods in a bonded warehouse are in the joint custody of the warehouse owner and the Customs Service. Bearing in mind the requirements of section 19.1(c), Customs Regulations, and the fact that the warehouse is operating under reduced supervision and therefore not subject to the control of a full-time Customs warehouse officer, we are not persuaded that a chain and warning signs constitute a sufficient partition to separate the bonded and nonbonded portions of the warehouse. Further, we are not unmindful of the fact that other warehouse proprietors who may be similarly situated have borne the expense of complying with the regulations pertaining to separation of bonded and nonbonded portions of warehouses.

The proposed pilot program would require changes in section 19.1(c), Customs Regulations, and the reduced supervision of warehouses program which in our view are not warranted by the circumstances.

Ruling.—Existing Customs Regulations do not provide for unfenced, unlocked, Customs-bonded portions of the warehouse separated from nonbonded portions only by a chain and warning signs.

(C.S.D. 79-357)

Bonds: Listing of Carriers on Vessel, Vehicle, or Aircraft Bond (Term)

Date: February 16, 1979
File: BON-3-R:CD:D WR
209789

This ruling involves the requirement for identifying the carrier who is represented by the principal on a term vessel, vehicle, or aircraft bond (Customs form 7569).

Issue.—Whether a principal on a vessel, vehicle, or aircraft bond (Customs form 7569) must name each carrier for whom the bond is to be obligated?

Facts.—The inquirer, a district director, stated that in most instances it is impossible for a vessel agent who has taken out a Customs form 7569 to know which vessel lines are going to be serviced during the term of the bond. The inquirer noted that in several instances the vessel agent contracts to be a line's representative only after the bond is accepted by the Customs Service. Finally, the bond transcript (Customs form 53) contains spaces for inserting the bond principal's name, additional names on the bond of principals, and names under which the principals do business; it does not contain a space for inserting the name of a carrier line that is represented by the principal on the bond.

Law and analysis.—When promulgated in T.D. 37246 (June 29, 1917) Customs form 7569 was limited to covering Customs transactions involving vessels at one port. The bond format, as set forth in the revision of June 1931, added a provision for aircraft arrivals and clearances, but continued to limit the transactions to be covered to those occurring at a single port. The Customs Regulations of 1931, article 1239(a)(3), provided for the Commissioner of Customs to approve a blanket vessel bond on Customs form 7569 on application of a marine carrier. Article 1240(a)(16) of the same regulations permitted a collector to approve a term vessel or aircraft bond on Customs form 7569. Article 1239 provided that the principal requesting a blanket bond was to identify the ports at which the vessel was to arrive and supply enough copies of the bond so that if the Commissioner approved the blanket bond, a copy could be sent to each of the identified ports. T.D. 45474 made it clear that when Customs form 7569 was used as a blanket bond by a marine carrier, it was approved by the bureau which certified copies of the approved bond to the ports involved.

Article 1253(a)(4) of the Customs Regulations of 1937 was identical to article 1239(a)(3) of the 1931 regulations. Article 1254(a)(19) of

the 1937 regulations was identical to article 1240(a)(16) of the 1931 regulations. Article 112(g), 1937 regulations, provided for a blanket vessel bond to be filed by a regularly established steamship company at the port where the company maintains an office.

The policies of the 1937 regulations were continued with the 1938 regulations. Section 19 CFR 23.3(a)(4) (1938 edition). Those regulations later became the Customs Regulations of 1943 with Customs bonds being covered in part 25 rather than part 23; thus, section 23.3(a)(4) of the 1938 edition became section 25.3(a)(4) in the 1943 regulations.

T.D. 52019 deleted subparagraph (4) from section 25.3(a) of the 1943 regulations. That Treasury decision increased the authority of a collector to approve a blanket term bond on Customs form 7569 by adding subparagraph (19) to section 25.4(a) of the 1943 regulations. However, the authority to approve a blanket bond was limited to ports within one collection district. Moreover, since the edition of October 1942, Customs form 7569 contained a space for the bond principal to list each port at which vessels were to enter. This provision was continued up to the September 1970 edition of Customs form 7569, the immediate predecessor to the current edition, which was approved on July 18, 1973.

T.D. 68–195 consolidated the automated bond information system (ABIS) by adding a requirement to file the bond transcript (Customs form 53) when a person desired a bond on Customs form 7569. Additionally, sole authority to approve that bond was vested in district directors.

The history of Customs form 7569 and related regulations indicates that it was originally designed for use by marine carriers at one port. Later, apparently by bureau letter dated April 14, 1928, the same form was also to be used as a blanket bond form. The April 14, 1928 letter is cited as a source for article 1239(a)(3); however, the letter itself is not available among the unnumbered circular letters or the collection of Customs papers at the National Archives.

As a blanket form, the regulations contemplated its use by a regular steamship company. Now, the form may be used as a blanket bond by any person. Because of these changes, the requirement for identification of the line poses a problem that was not originally contemplated; a bond being taken out by other than a steamship company on its own vessels.

The next issue is whether it is necessary for bond principals to identify the line or lines for which the bond is to be charged. Legal Determination 3510–07 held that identification of the line was necessary in order to avoid having the Government prove that the principal

on the bond was the agent for any line involved in a transaction covered by the bond.

A principal on a general term bond for entry of merchandise (Customs form 7595) does not identify on the bond form the name of the person for whom the bond is used to make entry. However, in order to assess liquidated damages or to collect duties on the bond, it is necessary to show by means of the entry papers that the principal on the bond was obligated to perform the condition on which the Government claims a default.

In the case of *U.S.* v. *Gissel*, T.D. 73–86, 353 F. Supp. 768 (S.D. Tex. 1973); affd. 493 F. 2d 27 (5th Cir. 1974), cert. den. 95 S. Ct. 332, 419 U.S. 1012, 42 L. Ed. 2d. 286, the Customs Service did not appear to experience any difficulty in proving that the principal on the bond, a Customs form 7569, was obligated to pay the duties on a vessel repair entry. In most situations, it seems necessary for the Government to introduce evidence of the vessel entry in order to support a claim under a bond charged against that entry. Consequently, the proof of the principal's contractual relationship is an incident to proving a default in connection with the entry or clearance. Therefore, it seems unnecessary for the contractual relationship to be set forth on the bond form itself.

For this reason, the words "all lines represented by" with the name of the principal inserted after the word "by" in the first "Whereas" clause is sufficient for Customs purposes.

Holding.—Legal Determination 3510–07 is modified to permit a principal on a term vessel, vehicle, or aircraft bond (Customs form 7595) to complete the first "Whereas" clause by adding the words "all lines represented by" followed by the principal's name. While the Government's position appears to be weakened by this ruling, it is believed that the increase in the burden of proof is more in the nature of a theoretical problem than one which has a practical effect.

(C.S.D. 79–358)

Carrier Control: Whether the Operation of a Japanese Fish-Processing Vessel Moored to a Dock in Alaska Is Violative of the Coastwise Laws

Date: February 16, 1979
File: VES–3–07–R:CD:C
103796 PC

This refers to your letter of December 21, 1978, concerning the proposed chartering of a Japanese fish-processing vessel by a client of yours (name), to freeze salmon at Chignik, Alaska. You ask whether,

under the following circumstances, the foreign fish-processing vessel would violate the requirements of the Jones Act, title 46, United States Code, section 883.

You state that the processing vessel would be used solely as a processing facility while moored at the (client's) dock in Chignik, and would be used as if it were a shoreside factory. American labor would be used exclusively. American-owned and operated vessels would catch the salmon and American-owned and operated tenders would bring the salmon to the moored vessel for processing. After the salmon are frozen they would be offloaded to vessels taking the products directly to Japan. At the end of the season whatever inventory was then on the processing vessel would return to Japan in its holds.

As described, the foreign processing vessel would not be transporting any merchandise (fish) between points embraced within the coastwise laws but would be used solely for processing fish while remaining in a stationary position. Such use would not be in itself considered a use of the vessel in the coastwise trade and while so used would not be in violation of title 46, United States Code, section 883. Of course, the foreign processing vessel would be required to comply with all the applicable requirements relating to report of arrival, entry, and clearance of a foreign vessel.

We have answered your specific question concerning the use of the foreign processing vessel in the coastwise trade. However, since it has been noted that the processing vessel will be located in a place other than a port of entry, there may be laws and regulations applicable to the vessels which are to lade the fish from the processing vessel for exportation. Therefore, it is suggested that you contact the District Director of Customs, Anchorage, Alaska, with respect to the requirements for those vessels.

This reply is limited to the laws administered and enforced by the U.S. Customs Service.

(C.S.D. 79-359)

Bonded Carriers: Whether a Carrier May Be Designated a Private Carrier of Bonded Merchandise If Not the Proprietor of a Customs-Bonded Warehouse

Date: February 27, 1979
File: BON-3-R:CD:D
209740 B

Issues.—(1) May a corporation be designated a private carrier under section 112.11(a)(4), Customs Regulations, for carriage of its own bonded goods, for purposes of entry for transportation and exportation

(T. & E.) without becoming the proprietor of a Customs-bonded warehouse and without using bonded storage at the entry and exit ports?

(2) Assuming such private carrier is the proprietor of a bonded Customs warehouse, may the movements covered in (1) be made without using the bonded facilities?

Facts.—A corporation located in California plans to import nails at Los Angeles/Long Beach and move the nails under T. & E. bond to Calexico, Calif., stopping there at the commercial gate, and thence proceeding into Mexico via Mexicali, Baja California. The corporation could become a bonded warehouse proprietor at its California premises, but does not plan to use its facility and questions the necessity of warehouse proprietorship in order to be designated a private carrier of bonded merchandise.

According to Mr. Pier, a speed changer is a device for changing speed of an output shaft in relation to the input shaft, and when there is a change in speed there is an inverse change in torque. Therefore, when speed increases torque decreases. Mr. Pier further testified the torque converter is not a speed changer since its primary function is to multiply torque.

Mr. John W. Rogers, an engineer employed by plaintiff, testified that he graduated from Cornell University with a B.A. in electrical engineering. He was familiar with the transmission since it was his responsibility to see that it was installed in the train and to prepare test procedures. Prior to his association with plaintiff, he was employed by United Aircraft which also produced a turboliner. The United Aircraft train had a direct-drive transmission system between the gas turbine and the wheels. One of the disadvantages of the United Aircraft turbotrain was that it had limited torque at low speeds, which resulted in slower acceleration. The witness was familiar with the torque converter and stated that it served the function of multiplying input torque to the output shaft.

Mr. Andrew F. Charwat, a professor at the University of California, Los Angeles, testified on behalf of the defendant. His testimony related to the torque characteristics of a cone pulley. The witness had not practical experience with turbotransmissions of the type involved.

It is evident to the court, based upon the evidence of record and a consideration of the multitude of cases which have determined for tariff purposes the term "machines," as well as the agreement of both parties, that the Voith turbotransmissions are in fact machines. In view of headnote 2, part 4, schedule 6, the primary question is whether the transmission is a multipurpose machine, a speed changer or torque converter.

The record establishes the turbotransmission is composed of a number of components which perform varied and separate functions as follows:

Holding.—Under the existing regulations, a carrier cannot be designated a private bonded carrier unless the carrier is the proprietor of a Customs-bonded warehouse. If such carrier is the proprietor of a bonded warehouse and is designated as a private bonded carrier, his movements are restricted to those set forth in section 112.11(a)(4)(iii), Customs Regulations. The movement or transportation from the port of entry to exit port under T. & E. bond may be made by any carrier under the bond of a common carrier, freight forwarder, or contract carrier, provided such carrier makes entry for the merchandise under shortages or misdeliveries by the actual carrier under the provisions of section 18.8(a), Customs Regulations.

Headquarters is now considering the question of whether these regulations should be made less restrictive.

(C.S.D. 79-360)

Bonds: Whether a Stipulation Is Needed for an Air Carrier Blanket Bond to Provide for an Off-Airport Facility

Date: February 27, 1979
File: BON-3-10-R:CD:D
209548 L

Issue.—The principal on an air carrier blanket bond (Customs form 7605) wishes to move its import airfreight cargo facility from Chicago-O'Hare International Airport to a location off the airport. Is a stipulation to the air carrier blanket bond to provide for the off-airport facility necessary?

Facts.—The principal on an air carrier blanket bond has requested the approval of the Regional Commissioner of Customs, Chicago, Ill., to relocate its import airfreight cargo facility from Chicago-O'Hare International Airport to an off-airport facility 1.75 miles from the present on-airport facility. The move is requested because the present facility can no longer provide the space required for processing the planned volume of airfreight and additional warehouse space on the airport is not available. Approval of off-airport facilities has been vested in Regional Commissioners of Customs. Customs Service communication ICS 232 IMG sets out a number of criteria for the guidance of Regional Commissioners in determining whether or not to approve service at new off-airport facilities. Criterion 8.a. states that "All carrier bonds must include a provision for the off-airport facilities."

The air carrier blanket bond is a consolidated bond incorporating the conditions of four Customs bonds: The carrier's bond, Customs form 3587; the vessel, vehicle, and aircraft bond, Customs form 7569; the instruments of international traffic bond, Customs form 7587; and the general term bond for the entry of merchandise, Customs form 7595.

Law and analysis.—The air carrier blanket bond was promulgated in T.D. 55395. That decision specifically provides that the air carrier blanket bond will apply to any port, station, or place where landing may be authorized in the United States or any of its territories and possessions, or where U.S. preclearance procedures have been established, without naming such places so as to avoid the necessity for rewriting the bond or writing an additional bond whenever it is desired to add a new port, station, or place.

"Port" and "station" are defined in section 101.1, Customs Regulations (19 CFR 101.1). The term "port" refers to any place designated by Executive order of the President, by order of the Secretary of the Treasury, or by act of Congress, at which a Customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the Customs and navigation laws. The term "port" incorporates the geographical area under the jurisdiction of a port director when such port is one other than a district headquarters port. A "Customs station" is any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States.

It appears that the new airfreight cargo facility, while outside the boundaries of the airport proper, is within the geographical limits of the Port of Chicago, Ill., as described in T.D. 71–121.

Inasmuch as the conditions of the air carrier blanket bond are in effect at any port, station, or place where landing may be authorized, and the facility is located within the geographic area of a port, no further stipulation to the air carrier blanket bond is required for the off-airport facility, assuming the Regional Commissioner of Customs is satisfied that all other requirements for the facility have been met.

Holding.—Air carrier blanket bonds do not require further stipulation to provide for off-airport facilities located within the geographical area of any port, station, or place where landing may be authorized provided the Regional Commissioner of Customs is satisfied all other requirements for the facility have been met. The bond, by its terms, covers all such locations.

(C.S.D. 79-361)

Allowance in Duty for Merchandise Reduced or Diminished by Natural Forces

Date: February 2, 1979
File: ENT 1-01 R:E:E
306811 M

This is in reply to your letter of November 27, 1978, in regard to T.D. 78-448 which added section 158.7 of the Customs Regulations providing for an allowance in duty for merchandise reduced or diminished by natural force such as evaporation or leakage.

Section 158.7 applies to bulk imported spirits as well as packages or containers. This provision applies only to the circumstances where the landed quantities at the first port of unlading in the United States are less than the manifested quantities of the merchandise. The term "natural force, such as evaporation or by leakage," in the context of section 158.7, includes all reasonable routine normal losses in handling, transit, and storage of the merchandise from the manufacturing plant in the country of exportation until the merchandise is landed at the first port of arrival. This section does not include in-transit losses between the first port of unlading in the United States and the port of entry or losses occurring in Customs-bonded warehouses. A pertinent example of an exception to the new allowance in 19 CFR 158.7 "forbidden by law or regulation" is schedule 6, part 2, headnote 4, Tariff Schedules of the United States (19 U.S.C. 1202), which provides that no allowance or reduction of duties for partial damage or loss in consequence of discoloring or rust occurring before importation shall be made upon iron or steel or any article of iron or steel.

Except for alcoholic beverages, there is no statutory authority permitting allowance for natural loss that takes place in the warehouse prior to the withdrawal of the merchandise for consumption. 19 U.S.C. 1563 allows for casualty loss to or injury of the merchandise during the initial 3-year, warehouse-bonded period, or while elsewhere under Customs custody, and for casualty loss to or theft of the merchandise in the appraiser's stores. However, 19 U.S.C. 1563 has been interpreted by the courts as not permitting an allowance for loss of quantities of merchandise in the warehouse due to natural causes, such as leakage or evaporation.

However, on alcoholic beverages, as stated in section 159.4 of the Customs Regulations, the importer is liable only for that quantity entered or withdrawn for consumption. The warehouse proprietor is liable under his warehouse proprietor's bond for losses occurring in the

warehouse. 26 U.S.C. 5008(a)(2) authorizes allowance for shortages of distilled spirits occurring in warehouse due to evaporation, spillage, et cetera. Customs Service Circular LIQ–1–O:D:E, dated August 29, 1975, and Manual Supplement 3700–02, dated January 17, 1979 (copies enclosed), permit a 1-percent allowance of the quantity entered into warehouse for each warehouse entry, without the necessity of documenting such shortages. However, any percentage loss greater than 1 percent of the quantity entered for warehouse for that warehouse entry must be sufficiently documented in order to obtain an allowance in excess of 1 percent. Prior to the August 29, 1975 Customs Service circular, all losses due to shortages of distilled spirits occurring in warehouse due to evaporation, spillage, et cetera, were required to be documented.

In regard to losses occurring to merchandise when transported in-bond from the port of unlading to the port of entry, entry for the merchandise must be made from the manifest quantity shown on the inbond document, unless a properly executed Customs form 5931 is received in accordance with section 158.3 of the Customs Regulations.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D.-1234)

PISTORINO & CO., INC. *v.* THE UNITED STATES, No. 79-14

Headnotes

1. CLASSIFICATION—BEAM CUTTERS.

Judgment of Customs Court, dismissing importer's claim that imported beam cutters should be classified as shoe machinery and parts thereof under TSUS item 678.10, rather than as machines not specially provided for under TSUS item 678.50, affirmed.

2. STANDARD OF REVIEW—EVIDENCE.

Standard of review of factual determinations of the Customs Court, including question of chief use, is whether finding is without substantial evidence to support it or is clearly contrary to weight of evidence.

3. CHIEF USE—CLASS OF MERCHANDISE.

In proving chief use, use of class of kind of merchandise to which imported merchandise belongs, rather than use of imported merchandise itself, must be proven.

4. ID.

Where imported merchandise is competitive with and can replace other similar merchandise, imported merchandise is of same class or kind as the other merchandise.

U.S. Court of Customs and Patent Appeals, October 11, 1979

Appeal from U.S. Customs Court, C.D. 4779

Affirmed.]

Walter E. Doherty, Jr. (Doherty and Melahn) attorney of record for appellant.
Alice Daniel, Acting Assistant Attorney General, *David M. Cohen*, Branch Director, *Joseph I. Liebman*, *Susan C. Cassell* for the United States.

[Oral argument on October 3, 1979 by *Walter E. Doherty, Jr.* for appellant and by *Susan C. Cassell* for the United States.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, and MILLER, *Associate Judges*, and WATSON, *Judge*.*

RICH, Judge.

[1] This appeal is from the judgment of the U.S. Customs Court, 81 Cust. Ct. 131, C.D. 4779, 463 F. Supp. 1311 (1978), dismissing appellant-importer's protest to the classification of imported beam-cutting machines under the basket provision for machines rather than as machines for use in shoe manufacturing. We affirm.

The Imported Merchandise

The imported merchandise consists of beam-cutting machines and parts manufactured by "Fipi" and "Atom" of Italy, imported from 1972 to 1974 and entered at the port of Boston, Mass., for the account of Hudson Shoe Machinery Co. The different models at issue in this consolidated action are invoiced as models F59, F63, F79S, and G888. All are electrohydraulic beam-cutting machines or beam presses. A beam-cutting machine consists of a structural member, called a trolley or cutting beam, which holds a hydraulically driven head positioned over a cutting bed. In operation, the material to be cut, such as felt, fabric, waxed paper, metal foils, and similar material, is placed on the cutting bed, and the trolley or cutting beam is positioned over a die placed on top of the material. The head is then caused to strike the die after which it returns to its up position to enable the operator to remove the cut material or reposition the die.

Beam-cutting machines vary in bed size and maximum cutting pressure. The imported machines have a cutting bed ranging in size from 16 by 59 inches to 30 by 79 inches and a maximum cutting pressure of from 20 to 25 tons. Other beam cutters can have larger bed capacity and/or higher cutting pressures than do the imported machines.

Statutory Provisions

The imported merchandise was classified upon liquidation under TSUS item 678.50 as modified by T.D. 68–9; appellant claims that classification is proper under TSUS item 678.10. The relevant provisions read as follows:

SCHEDULE 6, PART 4, SUBPART H.—OTHER MACHINES

*	* * * * * * *	
678.10	Shoe machinery and parts thereof	Free
*	* * * * * * *	
678.50	Machines not specially provided for, and parts thereof	5% ad val.

*Judge James Watson, of the U.S. Customs Court, sitting by designation.

In addition, both parties recognize the controlling relevancy of TSUS General Interpretative Headnote 10(e)(i):

General Headnotes and Rules of Interpretation

* * * * * * *

10. *General interpretative rules.*—For the purposes of these schedules—

* * * * * * *

(e) in the absence of special language or context which otherwise requires—

(i) A tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;

* * * * * * *

Customs Court

The Customs Court examined the testimony and evidence in light of the criteria set forth in *United States* v. *Carborundum Co.*, 63 CCPA 98, 102, C.A.D. 1172, 536 F. 2d 373, 377 (1976). The court found that the physical characteristics of the imported machines did not set them apart from other beam-cutting machines; that the expectations of the ultimate purchasers were such that the importations were not distinguishable from other beam cutters; that the imported merchandise moved in the same trade channels as did the general purpose cutters; that the imported merchandise was used in the same manner as other merchandise which defines the class, and that it was economically practical to use the imported machines in the same manner as those machines which define the class; and that the imported merchandise was advertised and displayed in a manner which held it out to be for use in general purpose cutting applications.

The court held that although appellant had shown that approximately 80 percent of the imported beam cutters were in use in the shoe industry, proof was lacking that the imported machines were of a different class or kind than the domestic beam cutters identified and described in the testimony of witnesses with experience in the industry. Absent such proof, the court deemed the imported beam cutters to be of the same class or kind as the general purpose cutters. The court distinguished the case of *C. H. Powell Co.* v. *United States*, 63 Cust. Ct. 302, C.D. 3912 (1969), relied on by appellant for the proposition that there is a class or kind of beam cutters used chiefly as shoe machinery, by noting that the evidence before it showed that the

nature of the industries to which beam cutters are sold has changed within the last 10 years, and that in this case the witnesses' testimony indicated that such cutters were in use in other industries. In *C. H. Powell*, *supra*, there was no such testimony; the defense witness was unable to recall if he had ever seen a beam cutter in operation.

OPINION

The dispute in this case centers on the issue of whether appellant-importer has shown, in accordance with general interpretative rule 10(e)(i), that the imported beam-cutting machines belong to an identifiable class or kind of beam-cutting machinery different from the class or kind of machinery to which belong the other, general purpose beam cutters.

[2] Where we are called upon to review factual determinations made by the Customs Court, the standard of review is whether the finding is without substantial evidence to support it or is clearly contrary to the weight of the evidence. *Cascade Corp.* v. *United States*, 66 CCPA —, —, C.A.D. 1219, 595 F. 2d 25, 30 (1979). The question of chief use is a question of fact and is thus subject to this standard of review. *Artmark Chicago Ltd.* v. *United States*, 64 CCPA 116, 119, C.A.D. 1192, 558 F. 2d 600, 602 (1977).

We are in agreement with the decision of the Customs Court. The court heard all of the testimony of the witnesses for both sides and was in a much better position than we are to evaluate the credibility of the testimony. But even our own examination of the testimony and exhibits leads us to the same conclusion made by the Customs Court. Its decision is based on the weight of the evidence and is adequately supported by the evidence, which fails to distinguish appellant's imported beam-cutting machines from the other beam-cutting machines used in other industries.

[3] As the Customs Court noted, it is the chief use of the class or kind of merchandise, not the imported merchandise, which must be proven. *United States* v. *Colibri Lighters*, 47 CCPA 106, 109, C.A.D. 739 (1960). Appellant's evidence was inadequate on this point; it consisted mainly of evidence of the use of the imported machines.

Appellant attempted to distinguish its importations from other beam-cutting machines on the basis of the differing size of the cutting bed and the 20- to 65-ton cutting pressure limit of the hydraulic head. Also cited were the length of the cutting stroke, the die size, and the speed of the traveling head. [4] However, the witnesses for the Government, without exception, testified that the imported machines were competitive with the machines which appellant was attempting to distinguish, and that the imported machines and the other machines

could be used side by side and could be used as replacements for one another in many applications.

For the above reasons, the judgment of the Customs Court is *affirmed.*

Decisions of the United States Customs Court

Customs Decision

(C.D. 4824)

ROHR INDUSTRIES, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Turbotransmissions

Turbotransmissions incorporated in turboliner trains classified as other speed changers under item 680.47, TSUS, *held* properly subject to classification under item 690.40, TSUS, as other parts of self-propelled rail vehicles.

A transmission is used for the purpose of transmitting power from the turboengine to the wheels of a vehicle. Power transmissions are not described in the superior heading of subpart J, part 4, schedule 6. Accordingly, pursuant to headnote 2, part 4, schedule 6, the transmission is not classifiable under either item 680.47 or 680.52.

Classification under item 678.50, TSUS, the basket provision, does not apply when a more specific provision (item 690.40) is involved.

The transmissions being parts of self-propelled rail vehicles are properly subject to classification thereunder since item 678.50 has been held not to be a specific provision within the intendment of General Interpretative Rule 10(ij). *Ideal Toy Corporation* v. *United States*, 58 CCPA 9, C.A.D. 996, 433 F. 2d 801 (1970).

Court No. 76-8-01939

[Judgment for plaintiff.]

(Decided October 5, 1979)

Stein, Shostak, Shostak & O'Hara, Inc. (*John N. Politis* at the trial and on the briefs) for the plaintiff.

Alice Daniel, Acting Assistant Attorney General; *Joseph L. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Laura D. Millman* at the trial; *John J. Mahon* on the brief), for the defendant.

FORD, Judge: Plaintiff imported certain turbotransmissions, designated as Voith L 411 brU, for incorporation in turboliner trains operated by Amtrak. The merchandise was classified by Customs upon liquidation as "Other speed changers" under item 680.47, TSUS, as modified by T.D. 68-9, and assessed with duty at $1.12 each plus 17.5 per centum ad valorem.

Plaintiff contends the classification is erroneous and that said merchandise is properly subject to classification as "Torque converters" as provided for in item 680.52, TSUS, as modified by T.D. 68-9, and as such subject to duty at 4.5 per centum ad valorem. This is based upon the premise that the principal purpose of the transmission is its operation as a torque converter. Alternatively, plaintiff contends if the court finds the transmissions do not have a principal purpose, then by virtue of headnote 2, part 4, schedule 6, they should be subject to classification as a "machine not specially provided for" under item 678.50, TSUS, as modified by T.D. 68-9, which provides for duty at the rate of 5 per centum ad valorem. If, however, the court finds neither of the above are applicable, plaintiff asserts the proper classification is under item 690.40, TSUS, as modified by T.D. 68-9, as other parts of self-propelled rail vehicles and as such dutiable at 5.5 per centum ad valorem. Defendant agrees with the latter contention if the court finds the classification to be erroneous and the other claims not to apply since item 690.40 is more specific than item 678.50.

The pertinent statutory provisions are as follows:

SCHEDULE 6.—METALS AND METAL PRODUCTS

* * * * * * *

PART 4.—MACHINERY AND MECHANICAL EQUIPMENT

Part 4 headnotes:

* * * * * * *

2. Unless the context requires otherwise, and subject to headnote 1 to subpart A of this part, a multipurpose machine is classifiable according to its principal purpose, but if such a machine is not described in a superior tariff heading as to its principal purpose, or if it has no one principal purpose, it is classifiable in subpart H of this part as a machine not specially provided for.

* * * * * * *

Subpart H.—Other Machines

* * * * * * *

678.50	Machines not specially provided for, and parts thereof	5% ad val.

* * * * * * *

Subpart J.—Parts of Machines

* * * * * * *

	Gear boxes and other speed changers with fixed, multiple, or variable ratios; pulleys, pillow blocks, and shaft couplings; torque converters; chain sprockets; clutches; and universal joints; all the foregoing (except parts of agricultural or horticultural machinery and implements provided for in item 666.00 and parts of motor vehicles, aircraft, and bicycles) and parts thereof:	
	Gear boxes and other speed changers, and parts thereof:	

* * * * * * *

680.47	Other speed changers	$1.12 each+ 17.5% ad val.

* * * * * * *

680.52	Torque converters, and parts thereof	4.5% ad val.

* * * * * * *

PART 6.—TRANSPORTATION EQUIPMENT

* * * * * * *

Subpart A.—Rail Locomotives and Rolling Stock

* * * * * * *

690.10	Self-propelled rail vehicles designed to carry passengers or articles	* * *
* * * * * * * *		
	Parts of the foregoing articles:	
* * * * * * * *		
	Other:	
* * * * * * * *		
690.40	Other	5.5% ad val.

The record consists of the testimony of four witnesses called by plaintiff and one on behalf of the defendant. Six exhibits were received in evidence for plaintiff and four on behalf of the defendant.

Mr. James A. Sieglitz, a customs coordinator for the plaintiff, testified that his duties consisted of reviewing contracts relating to importations and exportations of his company. The witness was familiar with L 411 brU turbotransmissions which were incorporated in the Amtrak turboliners manufactured by his company. Mr. Sieglitz identified a cutaway of one of the two power cars which, together with three other cars, make up a train set. It was received in evidence as plaintiff's exhibit 1. The transmission portion of the exhibit is circled in red.

Plaintiff thereafter called Mr. Wolfgang Paetzold, a well-qualified engineer for Voith Getriebe KG, the manufacturer of the Voith turbotransmission. Mr. Paetzold received an engineering degree from the University of Dresden. The Voith company, according to the witness, is a manufacturer of water turbines, paper machines and transmissions. He was familiar with the turbotransmission involved since in the 1960's there was a demand for high-speed railcars. Mr. Paetzold delivered the parameters of the transmission to the design department of Voith.

The witness identified exhibit 2 as a cross-section view which schematically depicts the transmission. One "X" was placed on exhibit 2 to identify the torque converter, two "X's" were placed on the exhibit which identified the fluid coupling, and three "X's" were placed on the exhibit to identify the hydrodynamic brake.

The turbotransmission, according to Mr. Paetzold, is a special railway transmission designed specially for propelling railcars and interacting with a gas turbine. In the opinion of the witness, the train could not operate without the turbotransmission. The witness was further of the opinion that said transmission was a machine. In addition to the type of transmission involved, mechanical-drive and electrical-drive transmissions are also utilized for railway-propelling systems. In a mechanical drive, the gas turbine is coupled to the wheels by gears which are in constant mesh. In an electrical drive, the gas turbine drives a generator to produce electricity which is supplied to the electric traction motors.

Exhibit 3 is a schematic drawing shaded in various colors to show the components. The yellow area encompasses the hydrodynamic brake and its control elements; the green area the torque converter and its control elements; the pink area the fluid coupling; and the orange area the reversing gear mechanism.

The torque converter, the witness stated, is a device which has as its main purpose the multiplying of torque. Torque is the turning effect of the force at the wheel. The force at the wheel of a locomotive is known as the tractive effort. The purpose of the Voith turbotransmission is to improve the performance characteristic of the gas turbine with a mechanical drive by multiplying the torque. The mechanical drive, while the simplest, has the disadvantage of generating very low torque at low and medium speeds, and the acceleration is very poor. In addition, it is difficult for a train with a mechanical drive to maintain high speed on a grade due to the limited torque generated by the gas turbine. The turbotransmission exerts its maximum torque at zero speed of the railcar. The torque multiplication factor is approximately 7, which means the torque at zero is seven times higher than the torque at maximum speed.

The witness, in explaining how the turbotransmission operates, stated that when the turboengine is first started there is no oil in the torque convertor and, therefore, no torque is being transmitted to the wheels of the railcar. The parts shown in red on exhibit 2 rotate when the turboengine is running. In order to provide motion for the train, fluid is sucked from the oil pump into the torque converter. The oil then strikes the turbine runner which causes it to rotate. The turbine runner is connected by means of gears to the wheels of the train which causes it to move. When the train reaches 70 percent of its maximum speed, the turbotransmission automatically changes over from the torque convertor to the fluid coupling, which has a higher efficiency at this speed range than the torque converter. The witness indicated the top speed of the railcar is 125 miles per hour.

Mr. Paetzold testified that the hydrodynamic brake is used to achieve the braking force without the use of a mechanical brake. When the hydrodynamic brake is filled with oil, the train is decelerated because the stator is standing still which retards the rotor of the hydrodynamic brake. This operation creates heat which is dissipated in the heat exchanger and enables the car to be braked, minimizing the wear and tear on the mechanical brake. The torque converter is unable to transmit torque in a reverse direction so the reversal capability is accomplished by a series of gears. This is necessary since the power car at the end of the train must use the reversal mechanism to assist in the movement of the train. In addition, an

electrical motor is incorporated since the turboliner operates in New York tunnels, requiring third-rail equipment for use on the train.

Mr. Paetzold testified further that there are input and output gear sections incorporated in the transmission. They are both fixed-speed reducing gears also known as constant speed changers. The input gears connect to the input shaft and are designed to reduce the input speed of the turbine engine of 5,700 to 4,500 revolutions per minute, the speed at which the transmission absorbs the required power from the gas turbine. In the output section of the transmission, the maximum speed of 125 miles per hour is accomplished by 2,200 revolutions per minute at the output shaft. The speed changer is designed in order to produce this speed.

According to the witness, the turbotransmission has no other use than with self-propelled rail vehicles and is necessary for the efficient operation of said vehicles. The witness was of the opinion that the principal function of the turbotransmission is its torque multiplication which is provided by the torque converter. The turbotransmission could operate without the hydrodynamic brake inasmuch as the train has mechanical brakes to perform the braking function.

The witness testified there was no specific relationship between torque and speed when the turbotransmission is in the torque converter range. However, he indicated that as output speed increases, the output torque decreases. Accordingly, the witness was of the opinion that the turbotransmission was not a speed changer since its purpose was to multiply torque and not change speed. The main objective of the turbotransmission is to produce torque, and change of speed was subservient to the torque.

Plaintiff then called Mr. Jerome R. Pier, an engineer presently employed by Westinghouse Air Brake Division of WABCO as manager of passenger transit marketing. Prior to that, Mr. Pier was employed by plaintiff as manager of special projects which involved examination of the turboliner program, and subsequently was appointed manager of the program. He received his B.A. in mechanical engineering from Pennsylvania State University, has written a number of technical papers, and holds 12 patents which are related to the rail transportation field. He testified the turbotransmission was essential to the self-propelled turboliner and necessary to multiply the torque. Mr. Pier testified that speed does not play a direct role in the torque converter. In his opinion, a train could operate without the hydrodynamic brake since it is supplemental to the friction brake. In his opinion, the turboliner could also operate without the fluid coupling since it merely increases the efficiency of the turboliner when it is operating at a higher speed. The turboliner could not, in his opinion, operate without the torque converter.

Law and analysis.—District Directors of Customs may designate a carrier a private carrier of bonded merchandise provided such carrier meets the criteria set out in section 112.11(a)(4)(i)(ii)(iii), of the Customs Regulations, as follows:

> (4) Private carriers may be authorized if:
> (i) The private carrier is the proprietor of a Customs-bonded warehouse;
> (ii) The merchandise to be transported is his property, having been imported by him, or purchased from another importer; and
> (iii) The merchandise is to be transported from the port of importation * * * for warehouse to the private carrier's Customs-bonded warehouse for physical deposit, or from the private carrier's Customs-bonded warehouse to another Customs-bonded warehouse for physical deposit, or, if for exportation, from a Customs-bonded warehouse of which the private carrier is the proprietor to a Customs-bonded warehouse at the port of exportation.

It is clear from the language set out in section 112.11(a)(4)(iii), Customs Regulations, that proprietorship of a bonded Customs warehouse is not the only condition for designation as a private bonded carrier. Private carriers are restricted in their movements of bonded merchandise to those movements set out in the referenced section of the regulations.

The Congress, in amending 19 U.S.C. 1551, to provide for private carrier designation (Public Law 90–240, ch. 3, 1968), delegated to the Secretary of the Treasury the power to provide guidelines through regulations which define the type of private carrier eligible for designation. To allow any private carrier to be designated a bonded carrier without further restriction, while other carriers enumerated in 19 U.S.C. 1551 must fall within their respective definitions set out in the Interstate Commerce Act, would be contra the intent of the Congress. It is for this reason private carriers are required to meet certain conditions before they may be designated and are restricted in their movements after designation.

The movements contemplated by the corporation may be made under the bond of a common carrier, contract carrier, or freight forwarder. Pursuant to section 18.1(a)(1) of the regulations, the transportation or movements must normally be made under the bond of one of these carriers. If one of these carriers files the entry for the nails under the carrier's bond and permits the corporation to operate under the carrier's bond, the movement or transportation could be accomplished in this manner. In these instances, the common carrier, contract carrier, or freight forwarder would be liable for any shortages or misdeliveries of the merchandise under the carrier's bond, in accordance with section 18.8(a) of the regulations.

1. Torque converter which multiplies torque to improve acceleration.
2. Hydrodynamic brake to assist the friction brake of the train.
3. A reversing mechanism which permits the railcar to operate in both directions.
4. A fluid coupling which is used after the train reaches a specific speed and which improves efficiency at high speeds.
5. Fixed ratio reducing gears (speed changer) at the input to the transmission. This reduces the rotation of the turbine to make it compatible with the input speed of the transmission.
6. Fixed ratio reducing gears (speed changer) reduce the output rotation speed of the transmission compatible with the rotational requirement of the drive wheels of the railcar.
7. A coupling device which enables the train to operate by an electric motor when used in the tunnels at New York City.
8. Various other components such as filling pumps, governors, sensors, and an oil cooler fan.

In view of the foregoing, it is apparent the Voith turbotransmission is a multipurpose machine. It is likewise obvious that the mechanism contains a torque converter, item 1, and two speed changers, items 5 and 6, as well as other components. Headnote 2 requires the court to determine whether there is one principal purpose. While the transmission contains among other components a torque converter and two speed changers, it is neither of these for tariff purposes. The principal purpose of the transmission is to transmit power from the turboengine to the wheels of the train. Power transmissions are not described in the superior tariff heading of subpart J and, accordingly, following headnote 2, said articles should fall within item 678.50.

However, item 678.50 is a basket provision which is not as specific as the alternatively claimed provision for parts of self-propelled rail vehicles as provided for in item 690.40. The court notes general interpretative rule 10(a)[1] which provides the headnote involved is subject to the rules of statutory interpretation and judicial rulings. It is apparent on its face that item 690.40 is more specific than item 678.50. Since defendant does not dispute the transmissions to be machines and since item 678.50 has been held not to be a specific provision within the scope of general interpretative rule 10(ij), *Ideal Toy Corporation* v. *United States*, 58 CCPA 9, C.A.D. 996, 433 F. 2d 801 (1970), the court finds the Voith transmissions to be properly subject to duty at 5.5 per centum ad valorem under item 690.40 as alternatively claimed.

Judgment will be entered accordingly.

[1] 10. *General interpretative rules.*—For the purposes of these schedules—

(a) The general, schedule, part, and subpart headnotes, and the provisions describing the classes of imported articles and specifying the rates of duty or other import restrictions to be imposed thereon are subject to the rules of interpretation set forth herein and to such other rules of statutory interpretation, not inconsistent therewith, as have been or may be developed under administrative or judicial rulings.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *October 9, 1979.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/170	Richardson, J. October 4, 1979	F. W. Woolworth Co.	77-4-00663	Item 748.20 21%	Item A748.20 Free of duty	Agreed statement of facts	San Francisco Articles ("fruit string assortment") produced within Hong Kong
P79/171	Richardson, J. October 4, 1979	F. J. Strauss Co., Inc.	77-12-04901	Item 737.95 17.5%	Item A737.80 Free of duty	Agreed statement of facts	New York Straco gyro-powered speedboats imported from Hong Kong

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/208	Richardson, J. October 4, 1979	Southern Precision Instrument Company	R59/16583, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Antonio (Laredo) Binoculars
R79/209	Richardson, J. October 4, 1979	Page & Jones Inc.	77-4-00662	Constructed value	Invoiced unit values	Agreed statement of facts	Mobile Steel components for electrical transmission towers

R79/210	Richardson, J. October 4, 1979	American Express Company, a/c Bus & Truck Supply Company	R66/2514, etc.	Constructed value	$21,466.80 plus value determined on appraisement of components furnished to Bus and Car Co. without charge by Western Sales, Ltd., less amount of any damage allowed in appraisement, plus or minus any adjustments made on appraisement for components or parts added to or omitted from a particular shipment, and less the value of components of U.S. origin	Agreed statement of facts	New Orleans Inter-city passenger buses

Appeal to United States Court of Customs and Patent Appeals

Appeal 79–41.—United States *v.* Seagull Marine—Inflatable Liferafts—Pneumatic Craft—Vessels Exempt From Duty—TSUS—Summary Judgment. Appeal from C.D. 4814.

In this case, inflatable liferafts were classified under item 696.05, Tariff Schedules of the United States, as modified by T.D. 68–9, as yachts or pleasure boats, valued not over $15,000 each, and assessed with duty at 2 per centum ad valorem. Plaintiff-appellee claimed the liferafts are exempt from duty as "vessels" in accordance with general headnote 5(e) of the tariff schedules. Defendant-appellant conceded the classification was erroneous and contended that the liferafts should be classified under item 696.35, as modified by T.D. 68–9, as pneumatic craft not specially provided for, not of a type designed to be chiefly used with motors or sails, dutiable at 6 per centum ad valorem. The Customs Court granted plaintiff's motion for summary judgment, denied defendant's cross-motion for summary judgment, and held that the inflatable liferafts were exempt from duty as "vessels" in accordance with general headnote 5(e).

It is claimed that the Customs Court erred in granting plaintiff's motion for summary judgment and holding that the imported merchandise constitutes a "vessel" within the meaning of general headnote 5(e); in not holding and finding that the imported merchandise was a pneumatic craft, properly classifiable in item 696.35, supra; and in not granting defendant's cross-motion for summary judgment and dismissing the action.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN AIRTIGHT CAST-IRON STOVES	Investigation No. 337–TA–69

NOTICE ADDING 26 RESPONDENTS AND DESIGNATING THIS INVESTIGATION AS MORE COMPLICATED

Background

On August 21, 1979, the Commission investigative attorney filed a motion to amend the complaint in the above-captioned case to add 28 respondents under the authority of 19 CFR 210.20(d). On September 11, 1978, the Commission investigative attorney moved to supplement his motion of August 21 by removing two named respondents and adding one additional respondent. The present notice and action involves only the 26 proposed respondents remaining on the August 21 motion.

On September 11, 1979, the administrative law judge issued order No. 7, recommending that 5 exporters of the cast-iron stoves in question be added as respondents and that the remaining 21 companies, all importers, not be added. She expressed concern that the addition of the importers at this time could result in too little time being available for discovery. She recommended that the deadline for completion of the investigation be extended to a time no later than 12 months after publication of an amended notice in the Federal Register, in

order to allow sufficient time for discovery by the added parties. On September 27, 1979, upon motion for reconsideration by the investigative attorney, the administrative law judge issued order No. 8, recommending that the additional 21 importers be added as respondents.

Commission Order

After considering the administrative law judge's recommendations as well as the complexity of issues and the great volume of evidentiary materials present in this investigation, the Commission declares this investigation "more complicated" within the meaning of 19 U.S.C. 1337(b)(1) and 19 CFR 210.15. A period of 6 additional months is provided for completion of this investigation. The extended investigation will be completed no later than January 12, 1981. The Commission also orders the addition of the following respondents:

1. KFK Industrial Co., Ltd.
   P.O. Box 1574
   Taipei, Taiwan
2. Sutherland Lumber Co.
   4000 Main St.
   Kansas City, Mo. 64111
3. The Dutchwest India Group
   109, Fifth Floor Kuang Fu N. Rd.
   Taipei, Taiwan
4. Basco, Inc.
   2130 Rt. 38
   Cherry Hill, N.J. 08002
5. Tetro Imports
   P.O. Box 1128
   Plattsburgh, N.Y. 12091
6. Hutch Manufacturing Co.
   Building Products Manufacturing Division
   200 Commerce Ave. P.O. Box 350
   Loudon, Tenn. 37774
7. Stratford Manufacturing Co.
   P.O. Box 8–227
   Taipei, Taiwan
8. Gambles Import Corp.
   2777 North Ontario St.
   Burbank, Calif. 91504
9. Central Hardware
   111 Boulder Dr.
   Bridgeton, Mo. 63044
10. Harbor Sales Co.
    26711 Woodward
    Royal Oak, Mich. 48068
11. Meteor Design International Ltd.
    1074 East Jericho Turnpike
    Huntington, N.Y. 11743
12. Huan Enterprise Corp.
    Floor 4, 29, Lane 161, Section 1 Sin-Shenk South Rd.
    Taipei, Taiwan
13. Abundant Life Farm, Inc.
    Box 188
    Lochmere, N.H. 03252
14. White Mountain, Inc.
    201 Great Mountain Rd.
    Acton, Mass. 07120
15. World Wide Distributors, Inc.
    P.O. Box 088607
    Seattle, Wash. 98188
16. Belknap, Inc.
    P.O. Box 32900
    Louisville, Ky. 40232
17. Collins Co., Ltd.
    Formosa Plastic Buildings
    Sixth Floor, 201 Tung Hwa North Rd.
    Taipei, Taiwan
    698 High St.
    P.O. Box 61
    Worthington, Ohio 43085
18. Nelson & Small, Inc.
    212 Canco Rd.
    Portland, Maine 04103

19. Fireplace Distributors
5900 Empire Way South
Seattle, Wash. 98119
20. Pay N Pak Stores, Inc.
P.O. Box 808
Kent, Wash. 98031
21. International Foundries
1255 Post St., Suite 625
San Francisco, Calif. 94109
22. Hanark Enterprises, Inc.
270 Oser Ave.
Hauppage, N.Y. 11787
23. Ranch-Rite, Inc.
1 Ranch-Rite Rd.
Yakima, Wash. 98033
24. Omni Trading Co.
P.O. Box 9096
Yakima, Wash. 98909
25. Wood Heat
Rt. 212 Pleasant Valley
Quakertown, Pa. 18951
26. Homestead Products
Star Route, Box 273, Dept. W
Ramona, Calif. 92065

Opinion

Section 337 of the Tariff Act of 1930, as amended, provides that the Commission shall conclude its investigation "at the earliest practicable time, but not later than 1 year (18 months in more complicated cases) after the date of publication of notice of such investigation." (19 U.S.C. 1337(b)(1).) Commission rule 210.15 (19 CFR 210.15) establishes the criteria under which the Commission must decide whether to designate the investigation as more complicated. These are: (1) The complexity of the subject matter; (2) the difficulty in obtaining information; and (3) the large number of parties involved. In this case it is abundantly clear that all three criteria have been met, although the rule requires that only one of the criteria be met.

The primary development in this case that necessitates its being designated "more complicated" is today's addition of 26 respondents to the 25 named in the notice of investigation. The addition of these parties makes the obtaining of information much more difficult and slower. The larger number of parties involved will mean that the new respondents will need time to obtain counsel so that they may participate in the case. It will also mean that discovery will be more laborious simply because the number of respondents is doubled. The complexity of the subject matter in this case results from the four allegations found in the notice of institution: (1) Common law trademark infringement; (2) infringement of a U.S. registered trademark; (3) passing off; and (4) false advertising.

It is in the public interest that all 26 respondents be added. The addition of these respondents insures that adequate relief will be available if the Commission determines that section 337(a) has been violated.

The respondents named in the notice of institution of the investigation included 10 importers. Some of the unfair methods of competition and unfair acts include alleged violations by importers that are separate and distinct from the unfair acts and unfair methods of

competition alleged against the manufacturer/exporters. In addition, there is apparently a large inventory of the product in question already in the United States. Because a cease and desist order may be an appropriate remedy in case of determination of violation, it is necessary that all parties who may be subject to a cease and desist order be joined. The public interest will best be served by addressing any cease and desist orders to all parties found to be violating the statute.

In keeping with the above considerations the Commission therefore adds as respondents the 26 companies named above, as provided by rule 210.20(d), and designates this investigation as "more complicated," as provided by rule 210.15.

By order of the Commission.

Issued: October 5, 1979.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

Customs Service Decisions

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

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